

## **Duties on drivers of non-designated wheelchair accessible Hackney Carriages and PHVs**

### **The Equality Act 2010**

On 28 June 2022, the Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 took effect in England, Scotland, and Wales. It amended the Equality Act 2010 to introduce new, and amend existing, duties for Taxi and Private Hire Vehicle (PHV) drivers and Operators alike. The aims are to ensure that disabled people can use taxi and PHV services with confidence that they will not be discriminated against.

This section provides an overview of the new and amended duties placed on taxi drivers, private hire drivers and operators however a breakdown of the responsibilities under each section of the legislation can be found at Appendix VI.

### **Wheelchair Accessible Vehicles**

Under the Section 167 of the Equality Act 2010 the Council are required to administer a list of licensed vehicles which are occupied wheelchair accessible. This list is referred to as the Designated Vehicles list and is available at:

[www.gedling.gov.uk](http://www.gedling.gov.uk). Occupied wheelchair accessible means the wheelchair user is able to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in the wheelchair. Such vehicles are referred to as Wheelchair Accessible Vehicles (WAV).

### **Overview and explanation of duties on drivers**

Sections 164A, 165, 165A, 168, and 170 place duties on drivers to ensure that disabled people have specific rights and protections to access taxis and PHVs, to receive assistance when using these services, and to not be charged extra for doing so.

We recommend that the driver or operator asks every passenger whether they require assistance. For hired vehicles, this should be at the booking stage. For taxis, this should be when the vehicle is hailed or approached at the taxi rank or on the street.

Where applicable, service providers should also update booking websites and smartphone applications to collect this information from passengers, allowing, for example, a person with dementia to ask for assistance in locating the vehicle or a wheelchair user to state their intention to remain in their wheelchair while travelling. This will also give the driver or operator the opportunity to advise the passenger on how they will provide assistance, for example to explain how the vehicle's ramp will be used or to establish an appropriate place for a wheelchair user to enter the vehicle.

### **Sections 164A and 165: duties to carry and assist any disabled person**

164A and 165 place duties on drivers to carry and assist disabled passengers without making, or proposing to make, an extra charge for doing so. Drivers who are subject to section 165 have an additional duty to carry the passenger whilst seated in their wheelchair.

**The duties at section 164A apply to:**

Drivers of any taxi or PHV which is not included on the Gedling Borough Council list of designated wheelchair accessible vehicles, where the passenger is disabled, including wheelchair users (with the assumption that the wheelchair user transfers to a passenger seat to travel) drivers of any vehicle which is included on a designated list, where the passenger is disabled and not a wheelchair user.

**The duties at section 165 apply to:**

Drivers of any vehicle which is included on the Gedling Borough Council designated list, where the passenger is in a wheelchair, the vehicle has been hired by or for a disabled person who is in a wheelchair or by another person who wishes to be accompanied by a disabled person who is in a wheelchair.

The application of section 164A or 165 is based on whether the vehicle is designated wheelchair accessible and the circumstances of the disabled passenger.

Although each situation will be different, and reasonable mobility assistance will be subject to other applicable law – including health and safety legislation – we would expect drivers to provide basic assistance which could include, but may not be limited to:

- a) opening the passenger door
- b) folding manual wheelchairs and placing them in the luggage compartment
- c) installing the boarding ramp
- d) securing a mobility aid within the passenger compartment

Depending on the weight of the wheelchair or mobility aid and the capability of the driver, reasonable mobility assistance could also include (but may not be limited to) pushing a manual wheelchair or light electric wheelchair up a ramp or stowing a light electric wheelchair in the luggage compartment.

A driver should, however, only touch a wheelchair or mobility aid or seek to provide physical assistance if the user gives permission for them to do so.

We expect drivers to communicate with passengers when providing assistance, as this will be key to understanding a disabled person's needs. We recommend drivers:

- a) ask passengers what help they need
- b) listen to and understand the response, and then
- c) act on what they have been asked to do, seeking clarification, if necessary, on how to provide what is needed

Whilst access to the vehicle may be dependent on the wheelchair or mobility aid itself, drivers should not carry any unessential items in the boot of the vehicle which could prevent a wheelchair or mobility aid from being stowed there, or (in the case of designated vehicles) carry any unessential items in the passenger seating area

which could prevent a wheelchair user from travelling while seated in their wheelchair.

The requirement not to charge a disabled person extra means that a meter should not be activated before, or left running, whilst the driver performs duties required by the Equality Act 2010.

### **Section 165A: duties on drivers to assist a passenger to identify and find the vehicle**

Section 165A places duties on drivers to assist any disabled passenger to find or locate their pre-booked taxi or PHV without making, or proposing to make, an additional charge for doing so.

The section 165A duties apply to any pre-booked taxi driver and any PHV driver, regardless of whether their vehicle is designated as being wheelchair accessible or not, provided:

- the vehicle has been hired by or for a disabled person, or by another person who intends to accompany a disabled person the driver of the PHV or pre-booked taxi has been made aware before the start of the journey that the passenger requires assistance to identify and/or find that vehicle.

Drivers and operators should not attempt to identify a person's impairment or disability, only what type of assistance the driver needs to provide in order for the passenger to board, travel in, and alight from the vehicle in safety and reasonable comfort.

In order to help fulfil the duties at section 165A, drivers should familiarise themselves with the most common communication methods a person may require in order to identify and/or find the vehicle. These communication methods include, but are not limited to:

- a) giving audio directions for a visually impaired passenger (calling the passenger once at the pick-up point)
- b) giving visual directions (for example, the colour and registration of the vehicle) for a hearing-impaired passenger
- c) repeating key information for a passenger with mental or cognitive impairments

### **Sections 168 and 170: duties on drivers to carry assistance dogs**

Sections 168 and 170 place duties on drivers of taxis (under s168) and PHVs (under s170) to carry an assistance dog and allow them to remain with their user without making, or proposing to make, an additional charge for doing so.

It is an offence for a driver to propose to make, as well as to make, an additional charge for carrying out the duties in these sections. For example, a driver must not add a surcharge to the meter for carrying an assistance dog. The taximeter should not be activated until both the passenger and assistance dog are properly settled,

and the vehicle is ready to depart. Equally, the taximeter should be stopped as soon as the destination is reached, and before any unloading takes place.

### **Offences for PHV operators**

#### **Section 167A: offences for PHV operators not to refuse or fail a booking for a disabled person**

Section 167A makes it an offence for a PHV operator to refuse or fail to accept a booking from, or on behalf of, a disabled person because (i) the person is disabled or (ii) to prevent a driver from being subject to the duties at sections 164A, 165, or 165A. It also makes it an offence for a PHV operator to make, or propose to make, an additional charge for carrying out of any duty imposed on the driver of the private hire vehicle under section 164A, 165 or 165A.

#### **Section 170: offences on PHV operators not to refuse or fail a booking for an assistance dog user**

Section 170 makes it an offence for a PHV operator to refuse or fail to accept a booking from, or on behalf of, an assistance dog user:

- a) because the person will be accompanied by an assistance dog or;
- b) to prevent a driver from being subject to the duties at section 170

Operators should book trips for assistance dog users as they would for any other passenger, for example using the nearest driver to the point of pick-up, regardless of any preference that driver may have not to carry a dog.

### **Driver Exemptions**

Some drivers may have a physical condition or medical grounds which make it impossible or unreasonably difficult for them to provide the sort of physical assistance which the mobility assistance duties in the Equality Act 2010 require.

Section 166 requires Licensing Authorities to grant exemptions to applicable drivers specifically from the “mobility assistance” duties at 164A(5)(e) and 165(4)(e). This means that drivers with such exemption certificates are not exempt from any of the other duties at sections 164A, 165, or 165A. This applies to all such exemption certificates whether newly granted or previously held.

An exemption may be issued for as short or long a period as the Licensing Authority considers appropriate, bearing in mind the nature of the relevant physical or medical condition.

Separately to the exemptions at section 166 of the Equality Act 2010, Licensing Authorities can also issue exemptions to drivers under sections 169 (for taxi drivers) and 171 (for PHV drivers) relating to the duties to carry assistance dogs (sections 168 and 170). A driver with a section 166 exemption is not exempt from the duties at sections 168 or 170 in relation to carrying assistance dogs. Likewise, a driver with a 169 or 171 exemption is not exempt from the mobility assistance duties at 164 or 165.

Exemption certificates, which show the photograph of the driver, must be displayed in the vehicle whenever the driver is working. Information on how to apply for an exemption is at: <https://www.gedling.gov.uk/business/taxis/> or by contacting the Licensing Team at: [licensing@gedling.gov.uk](mailto:licensing@gedling.gov.uk)

### **Enforcement of responsibilities**

If you have a concern about a driver and or the private hire operator not fulfilling their duties, we ask that you report your concerns to the Council as soon as you can. We need to be able to identify the driver and or the private hire operator, so information from you about the registration number, the licence number of the vehicle and/or the name of the driver/operator is essential. It will also help if you can give us the names and addresses of any other witnesses.

We want to know about anything that may make a driver non-compliant with the duties of a driver of a designated vehicle. For instance:

- Refusal to carry a disabled passenger, their wheelchair and or mobility aids.
- Refusal or reluctance by the driver to assist a disabled passenger to get into or out of the vehicle; load the passengers' luggage, wheelchair or mobility aids into or out of the vehicle.
- Overcharging by way of adding an additional charge for the carriage of, and or the assisting a disabled passenger.
- Incorrectly displaying of an Exemption Notice within the vehicle
- Displaying an expired, fake or counterfeit Exemption Notice

You can report any concerns:

- By telephone – 0115 9013971
- Via our web site – [www.gedling.gov.uk/complaints/](http://www.gedling.gov.uk/complaints/)
- In person at Civic Centre Arnot Hill Park, Arnold Nottingham NG5 6LU
- Write to us at Licensing Section, Civic Centre, Arnot Hill Park, Arnold, Nottingham NG5 6LU

If sufficient information is provided we will investigate the complaint. Various actions can be taken should a complaint be upheld including the possibility of prosecution. Any driver or operator found to be in breach of their duties will face up to a £1000 fine.

## **The duties on taxi drivers and PHV drivers and operators under the Equality Act 2010 as amended by the Taxis and Private Hire Vehicles (Disabled Persons) Act 2022**

### **Duties on drivers of non-designated wheelchair accessible Hackney Carriages and PHVs**

#### **Section 164A**

##### **Disabled passenger**

Any disabled passenger, including wheelchair users.

##### **Duties**

1. To carry the passenger
2. To carry their wheelchair (e.g. in the boot of the vehicle)
3. To carry their mobility aids
4. To take reasonable steps to carry the passenger in safety and reasonable comfort
5. To provide reasonable mobility assistance
6. Not to make, or propose to make, any charge for carrying out the above duties

##### **Defences**

1. That the driver could not reasonably have known that the passenger was disabled (in order to comply with the duties)
2. It would not have been possible or reasonable for the wheelchair or mobility aids to be carried safely in the vehicle
3. It would not have been reasonable in all the circumstances for the wheelchair or mobility aids to be carried in the vehicle
4. The driver could not reasonably have known that the passenger required mobility assistance of the type required by the passenger

#### **Section 165A**

This applies to a PHV or where the Hackney Carriage has been prebooked.

##### **Disabled passenger**

Any disabled passenger, including wheelchair users.

##### **Duties**

1. To take such steps as are reasonable to assist the passenger to identify and find the vehicle which has been hired

2. Not to make, or propose to make, any additional charge for complying with the above duty

### **Defences**

1. The driver of the PHV or prebooked Hackney Carriage has not been made aware before the start of the passenger's journey in the vehicle that the passenger requires assistance to identify or find that vehicle

### **Section 168 (Hackney Carriages)**

#### **Disabled passenger**

Assistance dog users.

#### **Duties**

1. Carry the disabled person's dog and allow it to remain with that person
2. Not make, or propose to make, any additional charge for doing so

#### **Defences**

There are no defences for this section.

### **Section 170 (PHV Only)**

#### **Disabled passenger**

Assistance dog users.

#### **Offences**

1. A driver commits an offence by
2. Failing or refusing to carry out a booking accepted by the operator
3. If the booking is made by, on or behalf of, a disabled person
4. The reason for the failure or refusal is that the disabled person is accompanied by an assistance dog
5. Making, or proposing to make, an additional charge for carrying an assistance dog

#### **Defences**

1. There are no defences for this section.

### **Duties on drivers of designated wheelchair accessible Hackney Carriages and PHVs**

#### **Section 164A**

#### **Disabled passenger**

Any disabled passenger, apart from wheelchair users.

## **Duties**

1. To carry the passenger
2. To carry their mobility aids
3. To take reasonable steps to carry the passenger in safety and reasonable comfort
4. To provide reasonable mobility assistance
5. Not to make, or propose to make, any charge for carrying out the above duties

## **Defences**

1. That the driver could not reasonably have known that the passenger was disabled (in order to comply with the duties)
2. It would not have been possible or reasonable for the mobility aids to be carried safely in the vehicle
3. It would not have been reasonable in all the circumstances for the wheelchair or mobility aids to be carried in the vehicle
4. The driver could not reasonably have known that the passenger required mobility assistance of the type required by the passenger

## **Section 165**

### **Disabled passenger**

Wheelchair users.

## **Duties**

1. To carry the passenger while in the wheelchair
2. If the passenger chooses to sit in a passenger seat, to carry the wheelchair (e.g. in the boot of the vehicle)
3. To carry their mobility aids
4. To take necessary steps to carry the passenger in safety and reasonable comfort
5. To provide reasonable mobility assistance
6. Not to make, or propose to make, any charge for carrying out the above duties

## **Defences**

1. It would not have been possible for the wheelchair or mobility aids to be carried safely in the vehicle
2. It would not have been reasonable in all the circumstances for the mobility aids to be carried in the vehicle

## **Section 165A**

This applies to a PHV or where the Hackney Carriage has been prebooked.

### **Disabled passenger**

Any disabled passenger, including wheelchair users.

### **Duties**

1. To take such steps as are reasonable to assist the passenger to identify and find the vehicle which has been hired
2. Not to make, or propose to make, any additional charge for complying with the above duty

### **Defences**

1. The driver of the prebooked taxi has not been made aware before the start of the passenger's journey in the vehicle that the passenger requires assistance to identify or find that vehicle

## **Section 168 (Hackney Carriages)**

### **Disabled passenger**

Assistance dog users.

### **Duties**

1. Carry the disabled person's dog and allow it to remain with that person
2. Not make, or propose to make, any additional charge for doing so

### **Defences**

1. There are no defences for this section.

## **Section 170 (PHV Only)**

### **Disabled passenger**

Assistance dog users.

### **Offences**

1. Failing or refusing to carry out a booking accepted by the operator:
2. If the booking is made by, on or behalf of, a disabled person
3. The reason for the failure or refusal is that the disabled person is accompanied by an assistance dog
4. Making, or proposing to make, and additional charge for carrying an assistance dog

## **Defences**

1. There are no defences for this section.

## **Offences on PHV operators**

### **Section 167A**

#### **Disabled passenger**

Any disabled passenger, including wheelchair users.

#### **Offences**

1. Failing or refusing to accept a booking for the vehicle if:
  - a. The booking is made by, on or behalf of, a disabled person
2. The reason for the failure or refusal is:
  - b. That the person is disabled or
  - c. To prevent the driver from being made subject to a duty at sections 164A, 165, or 165A
3. Making, or proposing to make, and additional charge for carrying out any duty on the driver under sections 164A, 165, or 165A

#### **Defences**

1. It was reasonable not to have accepted the booking due to a lack of suitable vehicles

### **Section 170**

#### **Disabled passenger**

Assistance dog users.

#### **Offences**

Failing or refusing to accept a booking for the vehicle if:

the reason for the failure or refusal is:

1. That the person will be accompanied by an assistance dog
2. To prevent the driver from being made subject to a duty at section 170
3. Making, or proposing to make, and additional charge for carrying an assistance dog

#### **Defences**

1. There are no defences for this section.