

# TAXIS AND PRIVATE HIRE VEHICLES (DISABLED PERSONS) BILL

## EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM

### Introduction

1. This memorandum addresses issues arising under the European Convention on Human Rights (ECHR) in relation to the Taxis and Private Hire Vehicles (Disabled Persons) Bill (“the Bill”) and has been prepared by the Department for Transport (“the Department”).
2. As the Bill is a Private Member’s Bill being taken forward by Jeremy Wright QC MP, and Lord McLoughlin, the Minister is not required to make a statement under Section 19 of the Human Rights Act 1998. The Department has, nevertheless, examined the compatibility of the provisions of the Bill with the ECHR and considers that the provisions of the Bill are compatible with the Convention rights.

### Summary of the Bill

#### Overview

3. At present, the Equality Act 2010 protects disabled people concerning taxis and private hire vehicles (PHV) in two ways:
  - a. Sections 20 and 29 provide a general duty for all service providers to make reasonable adjustments to their service to enable disabled people to access it. This duty can be enforced by disabled people themselves through the Civil Courts.
  - b. Sections 165, 168, and 170 include specific duties for taxi and Private Hire Vehicle (PHV) drivers in relation to the carriage of wheelchair users travelling in vehicles designated as being “wheelchair accessible”, and to passengers accompanied by assistance dogs. These duties can be enforced by local licensing authorities (LLAs) through the Magistrates’ Courts in England and Wales, and in the Sheriff Courts in Scotland.
4. The existing legislation does not provide specific rights or protections for all disabled people, other than wheelchair or assistance dog users.
5. The Bill seeks to ensure that all disabled passengers can travel with confidence that they will receive the assistance they need, and are not refused carriage or charged extra when using taxis and PHVs, regardless of their impairment or the

vehicle in which they wish to travel in. Specifically, it would amend the Equality Act 2010 (“the Act”) to:

- a. introduce duties for taxi and PHV drivers to carry disabled passengers and their mobility aids, in safety and reasonable comfort, and without additional charge;
- b. introduce a duty for taxi and PHV drivers to assist disabled passengers in finding their vehicle, without additional charge;
- c. introduce an offence for PHV operators to fail or refuse to accept a booking from a disabled passenger, unless it would not be reasonable for the driver to accept the booking due to a lack of suitable vehicles;
- d. make obligatory that licensing authorities maintain a list of wheelchair-accessible vehicles in their area; and
- e. amend the operation of exemption certificates for drivers in respect of disabled passengers, so that any such certificates exempt said drivers only from mobility assistance duties.

## Impacts

6. The Bill would impact two groups of people:
  - a. Drivers of taxis and PHVs; and
  - b. Taxi and PHV passengers who are disabled in accordance with the definition at Section 6 of the Equality Act 2010.
7. It is our understanding that the majority of taxi and PHV drivers already fulfil the requirements that would be introduced by this Bill and that, therefore, in reality, only a subset of drivers will be affected by the Bill provisions, namely:
  - a. Drivers who do not currently fulfil the proposed additional requirements and who may or may not fulfil the requirements after they come into force; and
  - b. Drivers who are eligible for an exemption from the mobility assistance duties on medical grounds or physical condition.
8. We have reviewed the potential impact of the Bill in the context of the ECHR, and our analysis is set out below.

## European Convention on Human Rights

### Overview

9. The Department considers that the Bill is compatible with the ECHR.

10. The Bill does contain provisions which we consider may engage Articles 6 (right to a fair trial), and 7 (right to respect for private and family life), but we do not consider that any of these Articles would be contravened.

### Article 6: Right to a fair trial

11. Clauses 1 and 4 of the Bill create offences for the failure of drivers, or PHV operators, as the case may be, to comply with a duty. The offences are comparable to existing offences in the Act in relation to the duties on taxi and PHV drivers. Clauses 1 and 5 also make amendments to the existing duties in the Act, which are subject to offences for failure to comply with those duties. The newly created and amended offences are triable summarily and punishable only with a fine not exceeding level 3 on the standard scale.

12. The inserted s.164A(5) imposes duties on the driver of a taxi or a PHV in respect of carrying disabled passengers. S.164A(9) makes it an offence to fail to comply with those duties. There are three driver defences relating to these duties:

- a. Subsection (11) provides for a defence when a driver is charged with an offence in relation to the duties to carry the passenger, and to carry the passenger in safety and reasonable comfort. The defence is for the driver to show that at the time of the alleged offence the driver could not reasonably have known that the passenger was disabled.
- b. Subsection (13) provides a defence when a driver is charged with an offence in relation to the duty to give the passenger mobility assistance. The defence is for the driver to show that at the time of the alleged offence the driver could not reasonably have known that the passenger required mobility assistance.
- c. Subsection (12) provides that it is a defence for a driver charged with an offence in relation to the duties to carry a passenger's wheelchair or mobility aids, to show that at the time of the alleged offence:
  - i it would not have been possible for the wheelchair or mobility aids to be carried safely in the vehicle, or
  - ii it would not otherwise have been reasonable in all the circumstances for the wheelchair or mobility aids to be carried in the vehicle.

13. Further, the inserted s.165(9A) similarly makes a defence for the driver to show that at the time of the alleged offence one of the conditions detailed above (i.e. in s.164A(12)) existed.

14. Finally, the inserted s.167A(2) makes it an offence for a PHV operator to fail to comply with the duties in s.167A(1), but under subsection (4) it is a defence for

a person to show that it was reasonable not to have accepted the booking due to a lack of suitable vehicles.

15. These clauses have been considered in the context of Article 6(2), which protects the presumption of innocence.
16. Article 6(2) does not prohibit rules that transfer the burden of proof to the accused to establish a defence, provided the overall burden of establishing guilt remains with the prosecution. The reverse burden must be confined within reasonable limits.
17. The inserted sections 164A(11)-(13), 165(9A) and 167A(4) establish defences in a similar manner to the existing defence in section 165(9), with the burden on the defendant only to adduce or show the requisite elements referred above, and these are only within the defendant's knowledge. The prosecution still needs to prove the breach of duty to the criminal standard.
18. For these reasons, the Department considers the defences established in clauses 1 and 4 to be justifiable, and within reasonable limits. It also considers that it is justifiable to place a reverse legal burden on the defence on the basis that the facts in issue are within the knowledge of the defendant and on that basis it is likely to be upheld in the courts. There is then accordingly no breach of the Article 6(2) guarantee.
19. Furthermore, LLAs will have responsibility for investigating alleged breaches of the new duties on drivers and operators, as they do for existing Equality Act 2010 offences related to the carriage of disabled passengers in taxis and PHVs. Either instead of, or in addition to, bringing a prosecution Authorities may apply sanctions, such as the suspension or revocation of a driver's taxi or PHV licence. This would be dependent on local licensing requirements and is outside the scope of the Bill and this consideration.

## Article 8: Right to respect for private and family life

20. Clause 3 amends section 167 of the Act, which currently permits licensing authorities to maintain a list of wheelchair-accessible vehicles, by making it mandatory for licensing authorities to do so. Clause 3 also amends section 167 to require licensing authorities to publish such a list.
21. The introduction of a requirement for licensing authorities to maintain and publish a list of wheelchair-accessible vehicles may result in the collection and sharing of personal data about taxi and PHV drivers and PHV operators. Such data might include the name of the driver, their business phone number, and the license plate of their vehicle. The exact contents of what must be contained in the list is not prescribed in the Act, but subsection (6)(aa) permits the Secretary of State to issue guidance to licensing authorities on how such a list is to be maintained and published.

22. The policy aim of requiring licensing authorities to maintain and publish a list of wheelchair-accessible vehicles is to ensure the duties at section 165 are applied consistently across England, Scotland, and Wales, and make it easier for persons in wheelchairs to contact and book accessible taxis and PHVs in their local area. The legitimate aim of these requirements is therefore to facilitate the use of taxis and PHVs by persons in wheelchairs. These requirements are necessary to ensure persons in wheelchairs have specific rights and protections to access a taxi or PHV in reasonable safety and comfort, and therefore serve a legitimate aim in the public interest. As such, the duties do not impose a disproportionate burden on the individual, the taxi or PHV driver, or PHV operator.
23. Clause 1 inserts section 165A into the Act, creating duties for taxi and PHV drivers to assist disabled passengers with identifying and finding the vehicle which has been hired, and to not make, or propose to make, any additional charge for complying with the duty. Inserted section 165A(3) requires that, in order for these duties to apply, the driver must have been made aware of the passenger's need of assistance before the start of the journey.
24. This is likely to mean that a passenger, or someone on their behalf, would be expected to ensure the driver is made aware that they require assistance. Therefore, this may result in the sharing of personal information of the disabled person with the driver. However, inserted section 165A does not require the sharing with the driver of the nature of the passenger's impairment, but rather that they require assistance in identifying and finding their hired vehicle. The sharing of this information is therefore necessary to ensure the safety of disabled persons and serve a legitimate aim in the public interest. As such, the duties do not impose a disproportionate burden on the individual.

#### A1P1 – Protection of property (right to enjoy property peacefully)

25. Clause 1 imposes various duties on taxi and PHV drivers in relation to the carriage of disabled passengers. Clause 2 amends the operation of existing exemptions, such that those with exemption certificates are exempt only from mobility assistance duties. Clause 4 imposes duties on operators of PHVs to not fail or refuse to carry a disabled passenger.
26. The introduction of the duties on taxi and PHV drivers, and the amendment to the operation of exemption certificates, controls the use by the drivers of their vehicles. Similarly, the introduction of the duties on PHV operators controls the use of the vehicles by the drivers and operators. This engages A1P1, and the right to enjoy property peacefully.
27. Duties currently exist in the Act on taxi and PHV drivers and PHV operators in respect of the carriage of disabled passengers. Those duties are in place to make taxis and PHV accessible, wherever possible, to disabled persons. The

legitimate aim of those duties is to facilitate the use of taxis and PHVs by disabled persons.

28. The duties to be introduced by this Bill seek to enhance those duties, by creating safeguards to ensure that disabled persons can be carried by taxi or PHV where safe and reasonable to do so. The exemptions from a driver's duties, on the basis of that driver holding an exemption certificate, are being limited, such that they will now only exempt the driver from the duty to give passengers mobility assistance. This overall package of duties is necessary to ensure the safety, mobility, and access to services of disabled persons and serve a legitimate aim in the public interest. As such, the duties do not impose a disproportionate burden on the individual - the taxi or PHV driver or PHV operator.

## Conclusion

29. The Department has considered the impact of the Bill, in accordance with the Human Rights Act 1998 and the ECHR, and has concluded that the Bill is compatible with the ECHR.