

EXPLANATORY MEMORANDUM TO
THE PUBLIC SECTOR BODIES (WEBSITES AND MOBILE APPLICATIONS)
(NO. 2) ACCESSIBILITY REGULATIONS 2018

2018 No. 952

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 (“the Regulations”) implement the EU Directive on the accessibility of the websites and mobile applications of public sector bodies¹ (“the Directive”). The Directive requires the UK to ensure that the websites and applications of UK public sector bodies are made more accessible for users, unless doing so would impose a disproportionate burden on the public sector body.
- 2.2 The Regulations revoke the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018 (S.I. 2018/852) (“the earlier Regulations”), due to drafting errors in that instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The earlier Regulations were made on 12 July and laid on 16 July 2018. They were due to come into force on 23 September 2018. The earlier Regulations contained two drafting errors which were noticed after the earlier Regulations were laid. The Regulations revoke the earlier Regulations and re-enact their content, correcting errors in that instrument. The Regulations will be issued free of charge to all known recipients of the earlier Regulations.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

¹ Directive (EU) 2016/2102

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 These Regulations revoke the earlier Regulations, and re-enact their content, correcting errors in that instrument. The Regulations are required to meet the United Kingdom's obligations to implement the Directive by 23 September 2018. The instrument uses the powers under section 2(2) of the European Communities Act 1972. The Directive is a minimum harmonisation Directive.
- 6.2 Some of the Directive's requirements are new to the UK but many are already covered in whole or in part by existing law. Where possible we have maintained existing requirements and made only the necessary changes to existing UK law. The Equality Act 2010 (in Great Britain) and Disability Discrimination Act 1995 (in Northern Ireland) imposes duties on service-providers to make reasonable adjustments for people with disabilities. The instrument establishes that a failure to comply with the accessibility requirement in the Regulations is to be treated as a failure to make a reasonable adjustment. The instrument also records that the primary enforcement bodies for enforcing compliance with regulations 6 and 7 are the Equality and Human Rights Commission (whose jurisdiction extends to Great Britain) and the Equality Commission for Northern Ireland (whose jurisdiction extends to Northern Ireland). These bodies have existing duties for web accessibility which overlap with the obligations in the Directive.
- 6.3 The instrument also gives the Minister for the Cabinet Office the power to assess and make a determination as to whether a public sector body has complied with a duty under regulation 8 to publish an accessibility statement. The instrument also provides public sector bodies with the right to request a review of this determination. In practice, assessment of a public sector body's compliance with regulation 8 will be undertaken by an official within the Government Digital Service (part of Cabinet Office), and any review will be considered by a separate official to help uphold the principles of natural justice in the decision-making process.
- 6.4 A transposition note is published alongside this Explanatory Memorandum on legislation.gov.uk.

7. Policy background

What is being done and why?

- 7.1 The Directive is designed to allow citizens, particularly those with a disability, to gain better access to public services by making public sector bodies' websites and mobile applications more accessible, and harmonising varying accessibility standards within the EU, reducing barriers for developers of accessibility-related products and services. "Accessibility" refers to principles and techniques to follow when designing, building, maintaining and updating websites and applications, in order to make them easy for people to use, especially people with disabilities.
- 7.2 The proposal for the Directive first emerged in 2012. The Directive entered into force on 22 December 2016 and must be transposed into UK law by 23 September 2018. Websites and mobile applications of public sector bodies will have to meet common

accessibility standards by the following dates: for public sector body websites created or substantially changed after September 2018, by September 2019; any other public sector body websites, by September 2020; all mobile applications of public sector bodies, by June 2021.

- 7.3 In a harmonised framework, the design and development industry for websites and mobile applications should face fewer barriers to operating in the internal market, while costs should be reduced for public sector bodies and others that are procuring products and services related to websites and mobile applications.
- 7.4 The policy objectives of the Directive align strongly with existing UK policy. The UK has a longstanding commitment to ensure equality of access to government information and services for the approximately 13.9 million disabled people in the UK.² As set out above, the UK has a robust existing equality regime under the Equality Act 2010 and Disability Discrimination Act 1995. The UK has ratified the United Nations Convention on the Rights of Persons with Disabilities, which requires its signatories to take appropriate measures to ensure persons with disabilities have access, on an equal basis to others, to information and communications, including the internet.³
- 7.5 The instrument will support these objectives by implementing the Directive’s requirements in the UK. It does not change the UK’s current approach to ensuring equality of access for disabled people: public sector bodies still need to proactively make reasonable adjustments to ensure accessibility of services and information. However the instrument does add detail to these existing requirements which, when combined, should help to raise awareness of web accessibility and support greater levels of compliance among public sector bodies.
- 7.6 The most significant differences include:
- **The accessibility requirement:** this provides further detail to the definitions of what is required to ensure equality of access to websites and mobile applications. Regulation 6 requires public sector bodies to take the necessary measures to make their websites and applications accessible by making them perceivable, operable, understandable, and robust⁴ — this requirement is referred to in the instrument as “the accessibility requirement”.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/692771/family-resources-survey-2016-17.pdf

³ Article 9 (Accessibility) of the United Nations Convention on the Rights of Persons with Disabilities: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-9-accessibility.html>

⁴ ‘Perceivable’ means that information and user interface components must be presented to users in ways they can perceive in some way - it can’t be invisible to all of their senses. ‘Operable’ means that any person must be able to use interface components (such as buttons and forms) and navigation. These can’t require interaction that a user can’t perform. ‘Understandable’ means users must be able to understand any information presented, as well being able to operate the interface (the content or operation cannot be beyond their understanding). ‘Robust’ means that the content must be capable of being interpreted reliably by a wide variety of user agents, including assistive technologies such as screen readers. It also means users must be able to access the content as technology changes over time. Based on an interpretation of WCAG 2.0 principles: <https://www.w3.org/TR/UNDERSTANDING-WCAG20/intro.html>

- **Disproportionate burden:** regulation 7 provides that a public sector body is not required to comply with the accessibility requirement where doing so would impose a disproportionate burden on that public sector body. Regulation 7 sets out the factors that public sector bodies should take into account when assessing the extent to which meeting the accessibility requirement would impose a disproportionate burden on that body.
- **Standards:** Part 3 of the instrument details that where public sector bodies' websites meet the European accessibility standard EN 301 549 (which is being updated to map to the latest version of the international web accessibility standard, WCAG 2.1 to level AA) it will be presumed to meet the requirements above. For mobile applications these will be presumed to meet the requirements where they meet technical specifications adopted by the EU, or, where no technical specifications have been produced, where the mobile application meets European accessibility standard EN 301 549.
- **Accessibility statement:** regulation 8 of the instrument requires public sector bodies to publish an accessibility statement and keep that statement under regular review. The accessibility statement must explain which parts of the content of a website or mobile application are not accessible, and, where appropriate, provide links to accessible alternatives. It will also include a contact form (e.g. an email address) for citizens to report accessibility issues and request information that has been excluded from a website or mobile application in an accessible format, and a link to the enforcement procedure if they are not content with response received from the public sector body.
- **Monitoring and reporting:** there are new monitoring requirements under the instrument. The Government Digital Service (part of the Cabinet Office) will monitor compliance by sampling websites on an annual basis, to meet the requirement in regulation 10 of the instrument. This monitoring will use a methodology adopted by the European Commission (this will be provided by December 2018). The Minister for the Cabinet Office is required to report back to the European Commission on the outcome of this monitoring.
- **Enforcement:** Part 5 sets out the enforcement bodies and procedures. The enforcement of the obligations in regulations 6 and 7 of this instrument will be undertaken by the Equality and Human Rights Commission (EHRC) in Great Britain and the Equalities Commission for Northern Ireland (ECNI) in Northern Ireland, as they currently have powers of enforcement in respect of compliance with the reasonable adjustment duty imposed on service-providers.
- There is also a need to ensure compliance with the requirement in regulation 8 for public sector bodies to provide an accessibility statement and keep it under regular review. The Minister for the Cabinet Office will enforce this narrow requirement, which is outside the EHRC's and ECNI's existing powers. The monitoring team will be based within Cabinet Office and undertake this enforcement role alongside the monitoring and reporting function. As the team will be responsible for analysing a certain number of accessibility statements each year, it is well positioned to carry out this role. If the Minister for the Cabinet Office determines that a public sector body has failed to comply with regulation 8, the Minister will publish the name of that public sector body and

the decision electronically on GOV.UK; if a person requests a paper copy this can be obtained from the Cabinet Office.

- **Exemptions:** Part 1 of the instrument contains exemptions for certain categories of public sector body. These are:
 - schools or nurseries – except for content relating to essential online administrative functions;
 - non-governmental organisations (NGOs) – unless they provide services essential to the public, or services that specifically address the needs of, or are meant for, persons with disabilities; and
 - public sector broadcasters, and their subsidiaries.
- Some types of content are also exempt including: live video; third-party content not under the control of the public sector body concerned; and contents of intranets and extranets published before 23 September 2019 (until such websites undergo a substantial revision on or after that date).

- 7.7 These changes support the UK government policy by helping to ensure greater clarity on what is required to ensure a website or mobile application is accessible. The policy objectives of these regulations are aligned with current policy requirements, as WCAG 2.0⁵ is a well-established international accessibility standard and it is an existing requirement of the standard against which the Government Digital Service assesses central government digital services.
- 7.8 It is difficult to quantify the exact benefits of this instrument due to the number of variables involved in making a website or mobile application accessible, as well as the difficulty in separating benefits brought about as a result of these regulations as opposed to existing requirements under the Equality Act 2010 and Disability Discrimination Act 1995.
- 7.9 Notwithstanding, improved web accessibility could potentially save public sector bodies money through reduced offline transactions or interactions such as telephone calls and face-to-face with members of the public.⁶ Some of the anticipated quality-of-life improvements arising from the instrument include assisting people with disabilities and the elderly to be more independent online and to access information and online services on an equal basis with others.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

⁵ The Web Content Accessibility Guidelines (known as WCAG) are an internationally recognised set of recommendations for improving web accessibility. They explain how to make digital services accessible to everyone, including disabled users. Examples of WCAG 2.0 requirements include ensuring there are captions on videos and adding text over images so that they can be read by a screen reader. The need to meet these standards has been a UK policy position for ten years, and builds on existing UK legislation and commitments. WCAG can be accessed at: <https://www.w3.org/TR/WCAG20/>

⁶ A report by The Society of IT Professionals (Socitm) from 2012/13 estimated the following cost per contact to local authorities for face-to-face (£8.21), phone (£2.59) and web (£0.09). Accessed at: <https://www.socitm.net/files/download/26>

9. Consolidation

9.1 This instrument does not amend or consolidate previous instruments.

10. Consultation outcome

- 10.1 The Government Digital Service has involved stakeholders and users in the development of the approach to implement the Directive. This has involved a formal public consultation on the proposed draft implementing regulations, roundtables with stakeholders, research with end users, and regular correspondence with the Accessibility Leaders' Network — a network of senior officials across central government accountable for accessibility within their departments.
- 10.2 The Government ran a public consultation on a draft of the instrument and implementation plans for the Directive, between 30 April 2018 and 28 May 2018.
- 10.3 The Government sought views from public sector bodies, disability charities, industry involved in creating accessibility software, and the public. Two roundtable sessions (17 May, 24 May 2018) and two webinars (4 April, 22 May 2018) were also conducted as part of the consultation process.
- 10.4 The consultation received 44 formal responses. Feedback on the draft instrument was received from a variety of respondents including, charities, local authorities, membership bodies, the private sector and a number of personal responses. In general, respondents to the consultation welcomed the new Directive and generally pressed for it to go further in its scope. Responses included calls for strict monitoring procedures to make sure public sector bodies adhered to the new requirements.
- 10.5 With regard to concerns about the scope of the Directive, the Government's response to the consultation confirms that Government policy is not to go beyond the minimum requirements of European Directives, unless there are exceptional circumstances. The Government is able to review the instrument once it has come into force and after the UK has left the European Union.
- 10.6 The Government's response also addresses concerns expressed that the Government Digital Service should not be the monitoring and reporting body. The Government Digital Service have extensive knowledge of design and delivery of government services and are a recognised leader in the accessibility field. To manage any potential conflict of interest and help ensure both impartiality and transparency, a stakeholder group will be set up to provide advice on monitoring that the team undertakes..
- 10.7 Further details on the views of respondents to the consultation, together with the Government's response to that consultation, can be found at the following link from 16 July 2018:

<https://www.gov.uk/government/consultations/accessibility-of-public-sector-websites-and-apps-new-duties-and-regulations>
- 10.8 Paper copies can be obtained by writing to:
Accessibility team
Government Digital Service
10 Whitechapel High Street
E1 8QS

11. Guidance

- 11.1 The Government Digital Service updated guidance⁷ to support public sector bodies to comply with the Directive on 29 June 2018. This guidance has been developed in consultation with stakeholders and tested with end users. This guidance links to the existing and longstanding guidance that the Government Digital Service provides to enable those designing services to ensure that they are accessible for all users.
- 11.2 The Government Digital Service will sign post to or provide training to support users to comply with Directive requirements. This may include webinars and in-person training. Government Digital Service will work closely with relevant stakeholders in the development of training and guidance, and will test this with users.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it does not have an impact on businesses.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the monitoring and reporting body must periodically monitor compliance with the Directive and report back to the Commission by 23 December 2021 and then every three years.
- 14.2 The regulations will be reviewed once the UK has left the European Union to assess whether the UK may want to modify any requirements under this Directive.
- 14.3 The regulation does not include a statutory review clause.

15. Contact

- 15.1 Tim Adey at the Government Digital Service Telephone: 07827 234 488 or email: team-eu-accessibility-directive@digital.cabinet-office.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Kieran Housden, Deputy Director for Strategy, Economics and Policy, at the Government Legal Department can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Oliver Dowden CBE MP at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

⁷ <https://www.gov.uk/guidance/accessibility-requirements-for-public-sector-websites-and-apps>