

<b>Report to:</b>	QSMTM
<b>Report by:</b>	Claire Stephen, Head of Policy and Information
<b>Meeting Date:</b>	14 February 2024
<b>Subject/ Title:</b> (and VC no)	Website accessibility statement – (VC202346)
<b>Attached Papers</b> (title and VC no)	C2 Accessibility Statement – Commissioner’s website (VC201699)

## Purpose of report

---

1. To seek Senior Management Team (SMT) approval of the Scottish Information Commissioner’s website accessibility statement.

## Recommendation and actions

---

2. I recommend that the SMT:
  - (i) approve the updates to the website accessibility statement.
  - (ii) agree future actions
  - (iii) agree the key document recommendations (see the record management section below).
  - (iv) agree the recommendations set out in the publication section of this report.

## Executive summary

---

3. In September 2018, new accessibility legislation came into force - the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018 (‘the Regulations’). In summary, these Regulations make it compulsory for UK public sector bodies to ensure their websites and mobile applications are accessible. (There are some exceptions allowed if in order to comply with the accessibility requirement would impose a ‘disproportionate burden on the public sector body’).
4. Monitoring is done by the UK Government’s Digital Service (GDS), which is part of the Cabinet Office (thus not a devolved matter).
5. Our website has been identified by the Digital Cabinet Office’s Accessibility Monitoring Team, during a random sampling exercise, as remaining only partially-compliant. Elements of our Accessibility Statement are now out of date. A report was issued to us (3 October 2023) based on testing carried out on 23 September 2023: it sets out actions that are required. This includes reviewing, then updating, our Accessibility Statement.
6. The report of their assessment can be viewed here (it’s a private link and therefore not in the public domain): <https://reports.accessibility-monitoring.service.gov.uk/reports/3000d913-4a1a-4829-9e6e-1bf23cc3ff96>
7. Publication of the monitoring exercise takes the following form (i.e.no reference to specific websites): [REDACTED]

8. We agreed and published an interim statement as a result of the GDS audit. Our updated statement reflects the work done to correct the issues identified by GDS, but also new issues identified through our internal audit commissioned through our website provider and reported to us on 17 January 2024.
9. WCAG guidelines are constantly changing and being updated; and technology (devices and browsers) is also in a constant state of flux. This means after a site is launched, regular accessibility reviews need to be carried out – at least every 12 months – unfortunately such requirements have not been factored in by procurement at the tender stage. Our supplier has provided a quote for regular accessibility audits.
10. Our website service provider explained why our site may have issues:
  - (i) Our site is over 12 months old. Technology changes, and the sites changes, so unless constantly reviewed sites will develop faults
  - (ii) Accessibility often depends on the devices or browsers; and it is impossible to test for all variations
  - (iii) Different accessibility tools will highlight different faults
  - (iv) Some faults are a result of a particular manual “stress test” which cannot be foreseen in all cases.
  - (v) Unless a regular check is done – issues will arise. Funds needs to be made available for this
  - (vi) Some unforeseeable ‘corner-case’ issues which are unlikely to occur naturally for a user, but are nonetheless tagged as a failure by automated tests. These are extremely difficult, if not impossible, to plan for.
  - (vii) Practically, it is extremely difficult to focus on the wide range of users all at the same time. Making the site more accessible for one group, might diminish the experience for another.
  - (viii) There can be issues with external services or embedded content which are outwith our suppliers’ control, such as media players or language widgets
  - (ix) To maintain accessibility, it’s also important that we produce content which aligns with accessibility requirements.
11. In order to meet the legal requirements, any website, intranet or mobile app run by a public body must:
  - (i) meet the international [WCAG 2.1 AA accessibility standard](#) (although there may be valid legal reasons for not meeting accessibility standards); and
  - (ii) publish an accessibility statement that explains how accessible the website or mobile app is.
12. The Regulations build on existing obligations to people who have a disability under the Equality Act 2010, which state that all UK service providers must consider ‘reasonable adjustments’ for disabled people. Making a website accessible means making sure it can be used by as many people as possible. This includes those with impaired vision, motor difficulties, cognitive impairments or learning disabilities and deafness or impaired hearing.

13. Public bodies are responsible for ensuring their websites meet the relevant accessibility requirements, even if they have outsourced support or maintenance to a supplier.
14. Certain types of content are exempt from the Regulations and as a result do not need to be made accessible in order for a site to be compliant. These include:
  - (i) Videos – the WCAG standard requires all videos to have captions and audio description; however, videos published before 23 September 2020 are exempt.
  - (ii) PDFs – PDFs published before 23 September 2018 are exempt but more recent PDFs are not (unless users need them to use a service)
  - (iii) Archived websites - if they are not needed for services the organisation provides and they are not updated
  - (iv) Content on intranets or extranets published before 23 September 2019 - unless major revisions are/were made after that date

### **How the Regulations are enforced**

15. GDS monitors public sector bodies' compliance on behalf of the Minister for the Cabinet Office. GDS does this by examining a sample of public sector websites every year. GDS can ask for information and request access to intranets, extranets or any public sector website.
16. Public sector bodies must publish an accessibility statement and review it regularly. If GDS decides that a public sector body has failed to publish an accessibility statement or that the accessibility statement is incorrect, it will publish the name of the body and a copy of the decision.
17. The Equality and Human Rights Commission (EHRC) will enforce the requirement to make public sector websites and mobile apps accessible (making them perceivable, operable, understandable and robust). Organisations that do not meet the accessibility requirement, or fail to provide a satisfactory response to a request to produce information in an accessible format, will be failing to make reasonable adjustments. This means they will be in breach of the Equality Act 2010. The EHRC can therefore use their legal powers against offending organisations, including investigations, unlawful act notices and court action.

### **Accessibility statement - changes proposed**

18. The Accessibility Statement should reference any issues or content which does not meet the required standard, and any alternative means of accessing the information. The statement should also include:
  - (i) whether the website is 'fully', 'partially' or 'not' compliant with accessibility standards (the website should be described as fully compliant if it meets accessibility standards in full, partially compliant if it meets most requirements, and not compliant if it does not meet most of the requirements)
  - (ii) if it is not fully compliant, which parts do not currently meet accessibility standards and why (for example, because they are exempt or it would be a disproportionate burden to address)
  - (iii) how people can get alternatives to content that is not accessible to them
  - (iv) how to contact the organisation to report accessibility problems - and a link to the website that they can use if they are unhappy with the response they receive

- (v) Information on how the organisation evaluated the website's accessibility and plans to fix any accessibility problems (this is optional)
19. The Commissioner published one accessibility statement for [www.itspublicknowledge.info](http://www.itspublicknowledge.info). This requires updates to reflect the necessary fixes and improvements identified in the Digital Accessibility Cabinet Office report.
  20. Within the proposed Interim Accessibility Statement relating to the Commissioner's website (VC 201699) these changes are as follows:
    - (i) Updated and simplified the introductory paragraphs, with the insertion of a link to Ability Net for advice on making devices easier to use if you have a disability.
    - (ii) Updated the "how accessible this website is" paragraph to reflect current status. This now reflects work done by the Union and our own internal work
    - (iii) Updated the "Compliance status" paragraph to show current situation with non-accessible content. In the non-compliance section, revision of current items listed to reflect the work completed by the Union and our own internal work to address issues reported to us on 3 October 2023 and 16 January 2024.
    - (iv) Removal of our "Disproportionate Burden" (DB) statement (further details below)
  21. A public sector body is not required to comply with the accessibility requirement if doing so would impose a disproportionate burden on the body (regulation 7(1))
  22. A body which wishes to argue that complying with the accessibility requirement would impose a disproportionate burden must perform an assessment of the extent to which compliance imposes a disproportionate burden (regulation 7(2)). This assessment, and the evidence to support it will be passed to ECHR for assessment.
  23. Our previous DB statement was based on our old website and encompassed a number of wide-ranging issues – with the migration to our new website a number of issues were resolved and we no longer consider this relevant.
  24. Some of our PDF publications are not fully accessible, many are pre-2018 and therefore not subject to the regulations and we are not required to fix these if they are not essential to providing our service:
    - (i) Decision notices – pre-2018 PDFs are not subject to the regulations, regardless all Decision Notices are published in both HTML and PDF.
    - (ii) Briefings and Guidance – all to be reviewed and checked for accessibility issues when reviewed and published in line with the Key Document process. All can be requested in an alternative format
    - (iii) Other publications – again, to be reviewed for accessibility issues when reviewed in line with our Key Document process. All can be requested in an alternative format.
  25. As 'approver' for these documents the SMT is invited to approve these revisions (above) so that we have an up to date and accurate statement online by **18 February 2024**, and in compliance with the requirements of the report from the UK Government's Digital Accessibility Cabinet Office. This also ensures the statement remains in line with requirements of the Regulations.

## Future Actions

26. Future actions required, following the above, include:
- (i) One of the requirements of the regulations is showing that a regular audit of accessibility standards on our website is conducted. It appears most, if not all, Officeholders were subject to the same GDS audit. We should investigate whether we can share the cost of website accessibility audit services with other office holders.
  - (ii) All staff with website administration rights to undertake website accessibility training in 2024-25.
  - (iii) Accessibility checks should be undertaken for all documents published on our website. This should be integrated into the key document process.

## Risk impact

---

27. The Commissioner is the regulator of FOI in Scotland and has functions and duties to fulfil; the Commissioner's website is a key tool in delivery of these functions and duties.
28. As a public body the Commissioner is required to comply with the Regulations and failure to do so may result in enforcement action, as set out above.
29. The review and update of the accessibility statements will mitigate the potential risk of non-compliance with the statutory/regulatory requirements.
30. The work being conducted to address remaining non-complaint accessibility issues with the website will mitigate strategic and operational risks associated with failing to ensure the public's awareness of access to information rights are adequate, and failing to maintain and develop a website with current, well-managed content in order to meet statutory duties.

## Equalities impact

---

31. The Regulations are designed to address website accessibility issues impacting on people with a range of disabilities. In addition to complying with the Regulations, the Commissioner is also required to comply with the Equality Act 2010 (the 2010 Act). Section 20 of the Act requires the Commissioner to make reasonable adjustments if a disabled person is placed at a substantial disadvantage because of their disability compared with non-disabled people. This clearly includes making reasonable adjustments to the website to prevent a disabled person being placed at substantial disadvantage.
32. Regulation 11 of the Regulations states that a failure by a public sector body to comply with the accessibility requirement is to be treated as a failure to make a reasonable adjustment. However, there is no obligation to comply with the accessibility requirement if doing so would impose a disproportionate burden (regulation 7(1)). Full detail relating to decision making and the Commissioner's considerations regarding disproportionate burden were included when the accessibility statements were approved in September 2020.
33. It is noted that not all people in Scotland can or wish to use the internet, and as a result the Commissioner provides information in alternative formats including via the enquiries service, wherever possible.

## Privacy impact

---

34. There is no direct privacy impact arising from this committee report or from the documents submitted for approval.

## Resources impact

---

35. There is no immediate additional resource impact arising from this committee report or from the documents submitted for approval. However, annual accessibility audits, will need to be factored into future annual budgets – we do not have the skills in-house to conduct such a technical audit.

## Operational/ strategic plan impact

---

36. This work will build on previous work in this area, aligning within operational plans for 2023-24. It is also a requirement for delivery of aims set out in the Commissioner's Strategic Plan. The website is an essential communication tool for all areas of the Commissioner's work.

## Records management impact (including any key documents actions)

---

37. The document submitted for approval is a key document and will be updated on the Register of Key Documents, as soon as possible.
38. I am the responsible manager for the documents, and SMT is 'approver'.
39. The interim statement will be published on the accessibility page of the Commissioner's website when relevant key document actions have been completed.

## Consultation and Communication

---

40. This paper, with the attached paper, have been prepared in consultation with the lead member of the Policy and Information Team on website accessibility, and the SMT.
41. If approved the interim accessibility statement and this paper will be published on the website.

## Publication

---

42. I recommend that this committee report is published subject to the redaction of the link in paragraph 7, which, if requested at this point would be exempt under section 30(c) of the Freedom of Information (Scotland) Act 2002.
43. I recommend that the attached papers are withheld in full on the basis that they are exempt from disclosure under section 27(1) of FOISA (Information intended for future publication): the papers will be published once the necessary key document actions have taken place and once the document is in final form (tracked changes accepted and document control sheet updated).