Legislation - UK

Relevant Acts

Equality Act 2010 is the legislation that states both public and private bodies cannot discriminate against those with a disability. It's more rigorous for the public sector and there are increased reporting requirements. It doesn't mention digital accessibility specifically but its broad application includes physical and digital services and resources.

The Public Sector Bodies Accessibility Regulations 2018 (PSBAR) is the legislation that applies to websites and mobile applications, and it only applies to parts of the public sector. Which types of digital content and which organisations within the public sector this act applies to is defined within the legislation, although it is complicated to understand, but there is some simplified guidance here: PSBAR Scope

To be compliant there are 2 components:

- meet the Web Content Accessibility Guidelines (WCAG) 2.2 AA accessibility standard
- publish an accessibility statement that explains how accessible your website or mobile app is

Interpretation of whether these acts apply to small publishers and eBooks

We would recommend that PSBAR applies to the eBook files (open and closed) and the website (both the public facing and any backend submission processes) of public sector publishers.

Most diamond OA publishers can be considered public sector, especially if the publisher is part of a public body i.e. a university, but also if the publisher has received public funding to start up, or if any content has received public funding at any part of its creation, for example, it has received public money to fund the research, or the publication of the monograph. Where this is unclear it would be advisable to consider the legislation as applicable anyway to avoid problems.

If a small publisher is ever very clearly part of the private sector, then it is covered by the Equality Act which makes discrimination towards those with a disability (and other protected characteristics) illegal. This legislation is less specific as to the standards that apply and companies

are not audited for compliance, however, providing inaccessible eBooks could be considered discrimination, and, it is never good for business to exclude large numbers of customers or readership.

This does not constitute legal advice.

More information about legislative requirements:

GOV.uk Equality Guidance - Equality Act 2010: guidance

GOV.uk Digital Accessibility Guidance - Understanding accessibility requirements for public sector bodies

Make Things Accessible - What are the Public Sector Bodies Accessibility Regulations?

Standards referenced in these acts and how they are audited

Web Content Accessibility Guidelines (WCAG) 2.2 AA

The Government publishes detailed information on Accessibility Monitoring: how we test. Your website might be randomly selected to be audited by the Government Digital Service, and if there are any issues, you have to fix these in 12 weeks. The legislation requires regular self-audits, but does not specify a particular frequency - annual can be seen as the default.

More information about auditing:

Government Digital Service 2021 Monitoring report

GOV.uk Accessibility monitoring of public sector websites and mobile apps 2020-2021

AbilityNet - How well have the public sector accessibility regulations been applied?

Accessibility Statements

An accessibility statement should be published on the organisational website. There is some minimal legal wording for the accessibility statement available on a template here: Accessibility Statement Template. This statement needs to be updated annually.

The template requires information about how accessible the website and eBooks are, including details of all known accessibility issues, contact details for use to report any further issues or request additional adjustments, and any exemptions that you are claiming. It also needs to include the enforcement procedure text provided, and this cannot be changed or modified.

It's likely that one accessibility statement would cover a whole publisher, but you could consider having a separate statement for each distinct part of the organisation, for example, one for the website itself and one that just describes the eBook files. You should make the statement very easy to find from the homepage of your website.

More information about accessibility statements:

Aspire - FACTS model for accessibility statements

Aspire - Model Statements

Make Things Accessible - Accessibility Statements - what are they?

Make Things Accessible - How to write an accessibility statement

W3C Developing an Accessibility Statement

Examples of accessibility statements:

Open Book Publishers

Leuven University Press

Citizen's Advice

City of York Council

Exemptions

The following organisations are exempt from the accessibility regulations:

- non-government organisations like charities - unless they are mostly financed by public funding, provide services that are essential to the public or aimed at disabled people
- public sector broadcasters and their subsidiaries
- primary and secondary schools or nurseries - except for the content people need in order to use their services, for example a form that lets you outline school meal preferences

There is no mention of micro-organisations in UK legislation.

PSBAR does not apply to the following content on websites and mobile applications:

- pre-recorded audio and video published before 23 September 2020
- live audio and video
- heritage collections like scanned manuscripts
- PDFs or other documents published before 23 September 2018 - unless users need them to use a service, for example a form that lets you request school meal preferences
- maps - but you'll need to provide essential information in an accessible format like an address
- third party content that's under someone else's control if you did not pay for it or develop it yourself - for example, social media 'like' buttons
- content on intranets or extranets published before 23 September 2019 (unless you make a major revision after that date)
- archived websites if they're not needed for services your organisation provides and they are not updated

There is also an exemption if accessibility would impose a disproportionate burden, but you're legally required to carry out an assessment.

More information about exemptions:

Make Things Accessible - PSBAR Exemptions

How to evidence disproportionate burden

Disproportionate burden is a clause within the accessibility regulations that provides exemptions based on the size and cost of remediation work relative to the organisation. The disproportionate burden clause is appropriate for smaller organisations, and could apply to many small diamond open access publishers.

You may only be able to evidence disproportionate burden for some accessibility aspects and not others. If you are thinking about making a disproportionate burden claim, it must be for something specific that cannot be accomplished, not general inability to consider improving accessibility at all or problems with testing the current accessibility of outputs. You will still need to respond to individual accessibility requests even if you are exempt due to disproportionate burden.

Organisations are legally required to carry out an assessment of the extent to which compliance with the accessibility regulations imposes a disproportionate burden. You cannot claim disproportionate burden without having completed and documented an assessment first. In essence you are not exempt until the assessment is completed.

Disproportionate Burden Assessments

Overall, a disproportionate burden assessment is balancing the burden that making those things accessible places on your organisation versus the benefits of making those things accessible.

You should describe:

- your organisation’s size and resources
- the nature of your organisation (for example, do you have services aimed at people who are likely to have a disability?)
- current accessibility issues and how you audited those
- how long an organisation expects this disproportionate burden to apply (for example, if an update or procurement is about to be completed)
- if the site or service is procured or outsourced, how long the third party supplier is contracted for, and how much it would cost to re-tender or renegotiate the contract to get the issues fixed

You should analyse:

- how much it will cost to fix the issues
- the amount allocated to spend on the digital products annually
- how these extra costs would impact the organisation’s budget
- the people or capacity needed to resolve the issue

- the benefits that fixing issues would bring to users
- how often the product is used or how long people spend interacting with it
- the number of users the issue impacts if not fixed

You should also:

- summarise the disproportionate burden assessment in your accessibility statement
- publish your evidence and test outcomes

What Makes a ‘Good’ Disproportionate Burden Assessment?

Some ways of evidencing disproportionate burden are to be avoided. In the 2021 report linked below, GDS specifically stated, “Lack of time or knowledge does not constitute a disproportionate burden.”

According to the 2020-2021 accessibility monitoring of public sector websites review, common issues with assessments include:

- organisations copying the disproportionate burden claim directly from the sample accessibility statement
- organisations claiming disproportionate burden without having carried out an assessment beforehand
- misunderstanding of when the disproportionate burden exemption applies, as opposed to other exemptions from the accessibility regulations

Within the AllAble research linked below, there are some further descriptions of bad practices encountered after requesting to see assessments:

- organisations saying they do not hold this information or no assessment was conducted (disproportionate burden cannot be claimed until this is completed)
- organisations saying they are in the process of conducting the assessment (disproportionate burden cannot be claimed until this is completed)
- organisations stating they originally claimed it but then changed their minds and forgot to take it out
- evidence provided that is dated after the request to see it was made
- organisations stating that the claim was discussed in meetings or calls and that there are no records of the decision

Many of these approaches highlighted as bad practice seem reasonable, but it is not enough within the legislation to consider it to be 'obvious' that accessibility issues have remained unfixed due to disproportionate burden. Even when very obviously out of reach for an organisation it must be assessed and evidenced, and if it really is that obvious then it should not be too difficult to demonstrate.

More information about disproportionate burden:

GOV.uk Digital Accessibility Guidance - When complying with accessibility regulations might be a ‘disproportionate burden’

DfE Accessibility and Inclusive Design Manual - disproportionate burden

2020-2021 PSBAR Monitoring Review

Make Things Accessible - understanding disproportionate burden

Make Things Accessible – how to write a disproportionate burden assessment

All Able 2020 Disproportionate burden misuse research

George Rhodes - an in depth article on disproportionate burden

Examples of disproportionate burden assessments:

GOV.uk Sample accessibility statement (for a fictional public sector website)

Equality and Human Rights Commission

Manchester City Council

University of Bradford

Cardiff and Vale University Health Board

Copyright Legislation

Copyright in the UK is covered by the Copyright, Designs and Patents Act. Exceptions to copyright are required under international legislation covered by the Marrakesh Treaty for print disabled/visually impaired people. This has been adopted in the UK by the Intellectual Property Office guidance.

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