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L09-18 | THE PUBLIC SECTOR BODIES (WEBSITES AND MOBILE APPLICATIONS) (No. 2) ACCESSIBILITY REGULATIONS 2018

Introduction

The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 (“the 2018 Regulations”) came into force on 23 September 2018. They implement the EU Directive on the accessibility of the websites and mobile applications of public sector bodies (Directive (EU) 2016/2102).

This briefing will explore and set out what they mean for local councils.

What are the 2018 Regulations?

The purpose of the 2018 Regulations is to improve the accessibility of public sector websites/ mobile apps so that can be used by as many people as possible. They build on existing obligations to disabled people under the Equality Act 2010 (“the 2010 Act”) and the duty to make reasonable adjustments for disabled people.

Use by as many people as possible could mean people with impaired vision, impaired hearing, cognitive impairments or learning disabilities amongst others. “Accessibility” doesn’t just mean putting things online. It concerns things like website content and design, type of font, etc, so that most people can use a website without needing to adapt it, whilst website content and design can be adapted for those for whom it is necessary, for example, screen reader software for users with impaired vision that reads out the content, or a screen magnifier.

Although the 2018 Regulations are now in force, the requirements to meet the accessibility standards do not apply for existing websites until 23 September 2020. For a new website published on or after 23 September 2018 it is 23 September 2019. For apps the deadline is 23 June 2021.

What do the 2018 Regulations mean for local councils?

The 2018 Regulations apply generally to public sector body websites and apps. The “public sector body” definition includes local authorities. It is NALC’s view that they apply to local councils.

1. Accessibility requirement

Regulation 6 of the 2018 Regulations provides that subject to exemptions contained in Regulation 7 (see below) public sector bodies such as local councils must comply with the accessibility requirement. This is defined in Regulation 3 as the requirement to make a website or mobile application accessible by making it perceivable, operable, understandable and robust. This can be done by meeting accessibility standards, that is, it complies with the international WCAG 2.1 AA accessibility standard.

As per Regulation 7 (1) of the 2018 Regulations a council is not required to comply with the accessibility requirement if doing so would impose a disproportionate burden on the council. A council seeking to rely on this exemption must perform a disproportionate burden assessment of the extent to which compliance with the accessibility requirement imposes a disproportionate burden (Regulation 7 (2)).

In undertaking a disproportionate burden assessment, a council must take account of relevant circumstances, including (a) the size, resources and nature of the council and (b) the estimated costs and benefits for the council in relation to the estimated benefits for persons with disabilities, taking into account the frequency and duration of use of the specific website or mobile application.

Things like lack of time or knowledge cannot be taken into account.

If, following the assessment, a council determines that compliance with the accessibility requirement would impose a disproportionate burden, it must explain in an accessibility statement the parts of the accessibility requirement that could not be complied with and, where appropriate, provide accessible alternatives to documents it holds that are not available on its website/ mobile app.

2. Accessibility statement

In addition to complying with the accessibility requirement, a council not seeking to rely on the disproportionate burden exemption must provide an accessibility statement and keep that statement under regular review (Regulation 8). The above timelines for existing and new websites and apps also apply for publishing accessibility statements. For a website, the accessibility statement must be provided in an accessible format and published on the council's website. For a mobile app, the accessibility statement must be provided in an accessible format; and available on the council's website or alongside other information available when downloading the mobile application.

The accessibility statement must include (a) an explanation of those parts of the content that are not accessible and the reasons why; (b) where appropriate, a description of any accessible alternatives provided; (c) a description of, and a link to, a contact form which enables a person to notify the council of any failure of its website or mobile application to comply with the accessibility requirement and request details of the information excluded, such as under the disproportionate burden exemption and that in Regulation 4 (2) and (d) a link to the enforcement procedure (see below) to which recourse may be had in the event of an unsatisfactory response to the notification or the request.

Regulation 4 (2) confirms that the 2018 Regulations do not apply to a council's website or mobile application content which is:

- (a) office file formats published before 23 September 2018, unless such content is needed for active administrative processes relating to the tasks performed by the council;
- (b) pre-recorded time-based media published before 23 September 2020;
- (c) live time-based media;
- (d) online maps and mapping services, as long as essential information is provided in an accessible digital manner for maps intended for navigational use;
- (e) third-party content that is neither funded nor developed by, nor under the control of, the council;
- (f) reproductions of items in heritage collections that cannot be made fully accessible because of either (i) the incompatibility of the accessibility requirement with either the preservation of the item concerned or the authenticity of the reproduction; or (ii) the unavailability of automated and cost-efficient solutions that would easily extract the text of manuscripts or other items in heritage collections and transform it into content compatible with the accessibility requirement;
- (g) content of extranets and intranets published before 23 September 2019, until such websites undergo a substantial revision; and
- (h) content of websites and mobile applications qualifying as archives.

This briefing will be updated when a model accessibility statement is produced, likely to be in December this year.

3. Providing an accessible alternative format upon request

A council is also required to provide information in another format if someone requests it, where it's reasonable to do so (Regulation 13).

A failure by a council to comply with the accessibility requirement is to be treated as a failure to make a reasonable adjustment for the purposes of the 2010 Act. A failure by a council to provide a satisfactory response to a request to provide information in an accessible format is also to be treated as a failure to make a reasonable adjustment. The enforcement body is the Equality and Human Rights Commission. The Cabinet Office may also undertake an assessment as to whether a council has complied with the accessibility statement requirement.

What steps should councils take to prepare?

The lag between the Regulations coming into force and when the 2018 Regulations requirements will apply gives councils time to get compliant. For councils who already have websites, it is recommended that they consider now whether new content published is accessible so they don't have to go back and fix it and they make a plan to meet the standards by the 23 September 2020 deadline and identify anything that is disproportionate to fix.

New websites must usually be fully accessible and meet the accessibility standard. Most modern websites, and the software for managing them, meet the accessibility standards so it is unlikely a council could make a valid argument that doing this is a disproportionate burden.

Councils are recommended to ensure that a new website or app meets the standards by:

- making sure the team or agency responsible for the website or app understands the WCAG 2.1 standard
- making sure the content is accessible
- doing basic accessibility tests before signing off a new website or app

Councils with existing or new websites will need to identify which parts of the website are and are not accessible/ meet accessibility standards and which parts do not. This is also needed for the accessibility statement. This means working with the people involved in running the website, including those responsible for code and content. Accessibility audits can be carried out but are likely to cost in the four figure sums so be out of reach for most councils.

More practical information can be found at
<https://www.gov.uk/guidance/accessibility-requirements-for-public-sector-websites-and-apps#making-a-plan>

NALC will update this guidance as and when required.

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