

Subsidiary Legislation made under s.6(b).

**Public Sector Bodies (Websites and Mobile Applications)
Accessibility Regulations 2018**

LN.2018/198

Commencement **23.9.2018**

Transposing :
Directive (EU) 2016/2102

ARRANGEMENT OF REGULATIONS.

Regulation

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In exercise of the powers conferred upon it by Section 6(b) of the Disability Act 2017 and Section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to transpose into the law of Gibraltar, Commission Directive (EU) 2016/2102 of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, the Government has made the following Regulations-

**PART 1
General**

Title.

1. These Regulations may be cited as the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018.

Commencement.

2. These Regulations come into operation on 23 September 2018.

Interpretation.

3. In these Regulations-

“accessibility requirement” means the requirement to make a website or mobile application accessible by making it perceivable, operable, understandable and robust;

“accessibility statement” means a detailed, comprehensive and clear statement produced by a public sector body on the compliance of its website or mobile application with these Regulations;

“bodies governed by public law” means bodies that have all of the following characteristics—

- (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) they have legal personality; and
- (c) they have any of the following characteristics—
 - (i) they are financed, for the most part, by Government or by other bodies governed by public law;

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- (ii) they are subject to management supervision by Government or those other bodies;
- (iii) they have an administrative, managerial or supervisory board, more than half of whose members are appointed by Government or by other bodies governed by public law;

“the Directive” means Directive 2016/2102 of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies;

“the Disability Act” means the Disability Act 2017;

“European standard” has the meaning set out in Article 2(1)(b) of Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European standardisation;

“the Gibraltar Regulatory Authority” means the body established under Section 3(1) of the Gibraltar Regulatory Authority Act 2000;

“harmonised standard” has the meaning set out in Article 2(1)(c) of Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European standardisation;

“the Minister” means the Minister with responsibility for Equality;

“mobile application” means application software designed and developed by or on behalf of a public sector body for use by the general public on mobile devices such as smartphones and tablets, but does not include the software that controls those devices (mobile operating systems) or hardware;

“model accessibility statement” means an accessibility statement adopted by the European Commission in accordance with Article 7(2) of the Directive;

“Official Journal” means the Official Journal of the European Union;

“public sector body” means—

- (a) the Government;
- (b) bodies governed by public law; or

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- (c) associations formed by one or more of the authorities in paragraph (b), if those associations are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

“standard” has the meaning set out in Article 2(1) of Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European standardisation;

“technical specifications” means specifications established in implementing acts adopted by the European Commission which prescribe technical requirements for meeting the accessibility requirement; and

“time-based media” means media of one or more of the following types: audio-only, video-only, audio-video, audio and/or video combined with interaction.

Application.

4.(1) These Regulations apply to a website or mobile application of a public sector body, except a website or mobile application of—

- (a) public service broadcasters and their subsidiaries, and of other bodies or their subsidiaries fulfilling a public service broadcasting remit;
- (b) non-governmental organisations, unless they provide services that—
- (i) are essential to the public; or
 - (ii) specifically address the needs of, or are meant for, persons with disabilities; and
- (c) schools or nurseries, except for the content of their websites or mobile applications relating to essential online administrative functions.

(2) These Regulations do not apply to the following content of a website and mobile application of a public sector body—

- (a) office file formats published before 23rd September 2018, unless such content is needed for active administrative processes relating to the tasks performed by the public sector body;
- (b) pre-recorded time-based media published before 23rd September 2020;
- (c) live time-based media;

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- (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 public sector body;
 - (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 23rd September 2019, or until such time as the website undergoes a substantial revision, whichever is sooner;
 - (h) content of websites and mobile applications qualifying as archives.
- (3) In this regulation—
- (a) “archives” means a website or mobile application which—
 - (i) only contains content that is not needed for active administrative processes; and
 - (ii) is not updated or edited after 23rd September 2019;
 - (b) “extranets and intranets” means a website that is only available for a closed group of people and not to the general public;
 - (c) “items in heritage collections” means privately or publicly owned goods presenting an historical, artistic, archaeological, aesthetic, scientific or technical interest and that are part of collections preserved by cultural institutions such as libraries, archives and museums; and
 - (d) “office file formats” means a document in a format that is not intended primarily for use on the web and that is included in web pages, such as Adobe Portable Document Format, Microsoft Office documents or their open-source equivalents.

PART 2
Obligations for Public Sector Bodies

Application of Part 2.

5. This Part applies as follows-

- (a) for a website of a public sector body not published on or after 23rd September 2018, on or after 23rd September 2019;
- (b) for any other website of a public sector body, on or after 23rd September 2020; and
- (c) for a mobile application of a public sector body, on or after 23rd June 2021.

Obligation to make websites and mobile applications accessible.

6. Subject to Regulation 7, public sector bodies must comply with the accessibility requirement.

Disproportionate burden assessment.

7.(1) Regulation 6 does not require a public sector body to comply with the accessibility requirement if doing so would impose a disproportionate burden on the public sector body.

(2) A public sector body must perform an assessment of the extent to which compliance with the accessibility requirement imposes a disproportionate burden.

(3) In undertaking such an assessment, a public sector body must take account of relevant circumstances, including—

- (a) the size, resources and nature of the public sector body; and
- (b) the estimated costs and benefits for the public sector body 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.

(4) If, following the assessment, a public sector body determines that compliance with the accessibility requirement would impose a disproportionate burden, it must—

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- (a) explain in its accessibility statement the parts of the accessibility requirement that could not be complied with; and
- (b) where appropriate, provide accessible alternatives to documents held by that public sector body that are not available on their website or mobile application.

Accessibility statement.

8 (1) A public sector body must provide an accessibility statement in accordance with the model accessibility statement, and keep that statement under regular review.

(2) For a website, the accessibility statement must be—

- (a) provided in an accessible format; and
- (b) published on the website of the public sector body.

(3) For a mobile application, the accessibility statement must be—

- (a) provided in an accessible format; and
- (b) available on the website of the public sector body or alongside other information available when downloading the mobile application.

(4) 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—
 - (i) notify the public sector body of any failure of its website or mobile application to comply with the accessibility requirement; and
 - (ii) request details of the information excluded under Regulation 4(2) and Regulation 7; and
- (d) a link to the enforcement procedure set out in Part 5 of these Regulations to which recourse may be had in the event of an unsatisfactory response to the notification or the request.

**PART 3
Presumed Conformity**

9.(1) A website of a public sector body will be presumed to be in conformity with the accessibility requirement to the extent that—

- (a) it meets harmonised standards, the references to which have been published in the Official Journal in accordance with Regulation (EU) No 1025/2012(a); or
- (b) where no references to the harmonised standards referred to in paragraph (a) have been published, it fulfils the relevant requirements of the European standard on the accessibility requirements suitable for public procurement of ICT products and services in Europe.

(2) A mobile application of a public sector body will be presumed to be in conformity with the accessibility requirement to the extent that—

- (a) it meets harmonised standards, the references to which have been published in the Official Journal in accordance with Regulation (EU) No 1025/2012; or
- (b) where no references to the harmonised standards referred to in paragraph (a) have been published, it meets the technical specifications; or
- (c) where no references to the harmonised standards have been published, and in the absence of technical specifications, it fulfils the relevant requirements of the European standard referenced in paragraph (1)(b).

**PART 4
Monitoring and Reporting**

10.(1) The Gibraltar Regulatory Authority must monitor the compliance by public sector bodies of their websites and mobile applications with the accessibility requirement, on the basis of the monitoring methodology.

(2) By no later than 23rd December 2021, and every three years thereafter, the Minister must submit a report to the European Commission on the outcome of the monitoring referred to in paragraph (1), including the measurement data.

(3) The Minister may derogate the preparation of the report required by paragraph (2).

(4) The Schedule makes supplemental provision about the reporting requirements referred to in paragraph (2).

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(5) In this Regulation, the “measurement data” means—

- (a) the quantified results of the monitoring activity carried out in order to verify the compliance by public sector bodies of their websites and mobile applications with the accessibility requirement;
- (b) quantitative information about—
 - (i) a sample of websites and mobile applications tested, including the number of websites and applications; and
 - (ii) the extent to which such websites and mobile applications meet the accessibility requirement.

(6) In this Regulation, the “monitoring methodology” means a methodology established in implementing acts by the European Commission for monitoring the conformity of websites and mobile applications with the accessibility requirement.

**PART 5
Enforcement**

Enforcement bodies for the obligations in Part 2.

11.(1) The enforcement body for the purpose of Regulation 12 is the Minister.

(2) The enforcement body for the purpose of Regulations 13 and 14 is the Gibraltar Regulatory Authority.

Acts or practices inconsistent with the Disability Act.

12.(1) A failure by a public sector body to comply with the accessibility requirement is to be treated as an act or practice that is inconsistent with the Disability Act.

(2) A failure by a public sector body to provide a satisfactory response to a request to provide information in an accessible format, pursuant to Regulation 13(2), is to be treated as an act or practice that is inconsistent with the Disability Act.

(3) Any such failure as prescribed in paragraphs (1) and (2) of this Regulation, will be addressed in accordance with the provisions of Section 9 of the Disability Act.

Notification and request for information.

13.(1) If a person believes that a website or mobile application of a public sector body has failed to comply with the accessibility requirement, that person may notify the public sector body of that failure.

(2) A person may request information in an accessible format that has been excluded from a website or mobile application of a public sector body pursuant to Regulation 4(2) or Regulation 7.

(3) A public sector body must provide a response to a notification or request made by a person under this regulation within a reasonable period of time.

(4) If a public sector body does not comply with paragraph (3) of this Regulation, or a person is dissatisfied with the response received, that person may complain to the Gibraltar Regulatory Authority.

(5) The Gibraltar Regulatory Authority shall notify the Minister of any complaints received pursuant to paragraph (4).

Accessibility statements: assessment.

14.(1) The Gibraltar Regulatory Authority may undertake an assessment as to whether a public sector body has complied with Regulation 8.

(2) As part of an assessment, the Gibraltar Regulatory Authority may by notice require a public sector body to provide information to the Gibraltar Regulatory Authority for the purpose of demonstrating compliance with Regulation 8.

(3) A public sector body that receives a notice under this regulation must provide such information within a period of 28 days beginning on the date of the notice.

(4) A notice under this regulation must not oblige a public sector body to give information that it is prohibited from disclosing by virtue of an enactment.

(5) Paragraph (6) applies where the Gibraltar Regulatory Authority sends a public sector body a notice under paragraph (2) and—

- (a) the Gibraltar Regulatory Authority considers that the public sector body's response does not demonstrate compliance with Regulation 8; or
- (b) the public sector body does not respond at all, within a period of 28 days beginning on the date of the notice.

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(6) The Gibraltar Regulatory Authority must make a determination that the public sector body has failed to demonstrate compliance with Regulation 8, and notify the public sector body of the determination.

(7) A public sector body that receives a determination made under paragraph (6) and disagrees with it may request a review.

(8) Any request for a review must—

- (a) be in writing;
- (b) state the reason for the request for a review; and
- (c) be made within a period of 28 days beginning on the date of the determination.

(9) The Gibraltar Regulatory Authority must consider a request for a review, made in accordance with paragraphs (7) and (8), within a reasonable period of time.

(10) If, following a request for a review, the Gibraltar Regulatory Authority determines that the public sector body has complied with Regulation 8, the Gibraltar Regulatory Authority must set aside the determination made under paragraph (6), and notify the public sector body.

(11) The Gibraltar Regulatory Authority may uphold the determination made under paragraph (6) if—

- (a) a public sector body does not request a review in the form specified in paragraph (8);
- (b) a public sector body does not request a review at all; or
- (c) the Gibraltar Regulatory Authority has considered the request for a review and is not satisfied that the public sector body has complied with Regulation 8.

(12) If the determination has been upheld pursuant to paragraph (11), the Gibraltar Regulatory Authority must publish the name of the public sector body and the determination of the Gibraltar Regulatory Authority electronically, and notify the public sector body.

(13) The Gibraltar Regulatory Authority shall notify the Minister of any determinations upheld pursuant to paragraph (11), and provide the Minister with details including:

- (a) the assessment undertaken pursuant to paragraph (1);

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- (b) any conclusions reached by the Gibraltar Regulatory Authority as a result of that assessment;
- (c) following a review, the reasons why it is not satisfied that the public sector body has complied with Regulation 8.

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SCHEDULE

Regulation 10

Reporting Requirements

1. The first report referred to in Regulation 10(2) must contain—
 - (a) a description of the mechanisms set up by the Minister for consulting with relevant stakeholders on the accessibility of public sector bodies' websites and mobile applications;
 - (b) procedures to announce any developments in accessibility policy in Gibraltar relating to public sector bodies' websites and mobile applications;
 - (c) findings from the implementation of the accessibility requirement;
 - (d) information on the training and awareness-raising activities undertaken by the Minister; and
 - (e) information on the use of the enforcement procedure.
2. The report is not required to list the websites, mobile applications or public sector bodies examined.
3. The report must be made public in an accessible format.
4. The report must conform to the arrangements for reporting established by the European Commission in implementing acts in accordance with Article 8(6) of the Directive.
5. Where significant changes have been made in relation to the elements referred to in paragraph 1 of this Schedule since the last report, the Minister must include in the report information concerning those changes.