

Authors' pre-print. Please cite: Lewthwaite, S. & James, A. (2020) Accessible at last? What do new European digital accessibility laws mean for disabled people in the UK? *Disability and Society*. <https://doi.org/10.1080/09687599.2020.1717446>

Accessible at last?: What do new European digital accessibility laws mean for disabled people in the UK?

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Abstract

Recent changes to the regulation of digital services could represent a step-change in the accessibility of public sector websites and applications in the UK and across Europe. Accessibility will be centrally monitored meaning the onus is no longer exclusively on disabled people to issue legal challenges to digital exclusion. How will these changes affect disabled people in the UK, in light of Brexit and the complex relationship between standards and disability?

Our society is becoming increasingly reliant on digital platforms. When checking in at the doctor's surgery, applying for a school place or submitting a tax return, we are expected to interact with digital platforms every day as governments and public services embrace 'digital-first' approaches, ostensibly to provide more efficient and effective services. Disability has been a driver of technical innovation in these digital domains. Early in the history of the Web, inventor Tim Berners-Lee stated 'The power of the Web is in its universality. Access by everyone, regardless of disability is an essential aspect' (W3C, 1997). However, for disabled people who use assistive technology or need adaptations (such as increased text-size), there has been no guarantee that digital services will work as both the Web and digital tools have proliferated, and services have diverged from their universalist origins. At the same time, the digital accessibility standards mandated by pre-existing legislation (UNCRPD, 2006; Equality Act, 2010) have not been enforced. While internet use among disabled people is increasing in the UK (ONS, 2019), the lack of progress improving digital accessibility across the UK and Europe is troubling (House of Commons Work and Pensions Committee, 2018).

Things could be about to change. In September 2019, new regulations that entered the UK statute book in 2018 came into force, with the potential to remake the digital accessibility landscape. These regulations, the *Public Sector Bodies (Websites and Mobile Applications) (No 2) Accessibility Regulations* (2018), are the first to specifically require organisations to ensure their websites, documents and mobile apps are accessible to all. The regulations require public sector organisations to comply with digital accessibility standards (such as WCAG 2.1 Level AA, 2008) and publish an accessibility statement. Moreover, in section 5.11 the regulations also explicitly identify the provision of accessible digital services and alternative formats as 'reasonable adjustments' under the Equality Act (2010). These moves offer a concrete legal impetus towards accessibility.

The regulations originate from the *EU directive 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies* (EC, 2016), which support the Digital Agenda for Europe as well as the implementation of the UNCRPD (2016) in members states. While the regulations are technical, importantly the key purpose of the directive is twofold; first, to ensure that all citizens can access services and participate in society, and promote and facilitate accessible digital developments; and second, to mitigate the need for individuals to take legal action to ensure basic access. To this end, the success or failure of digital accessibility in the public sector will be centrally monitored for the first time.

These mechanisms are sorely needed. For example, in 2017 with the roll out of Universal Credit - a transformation of the UK social security payment system - applications can only be made online. Applicants have had to complete application forms that had no 'save' or return function and timed-out after 20 minutes of inactivity, whilst battling with a complex form system in which "41 separate pieces of information are need to be entered online in order to complete the claim" (Easton, 2014). Accessibility audits by the DWP appear not to have been completed until 2016 (Anderson, 2016). And online barriers have continued, making applications practically impossible for many with learning disabilities, amongst others (HC Deb, 2019). This inaccessibility, in combination with "built-in delay" to payments (Universal Credit is paid monthly in arrears, resulting in a five-week wait for the first payment) has proven a tipping point pushing many into hardship and debt.

To mitigate such failings, the new directive sets out a Europe-wide framework for monitoring and enforcing accessibility. EU national governments will now sample a proportion of their websites annually. This will require national monitoring teams to do a simplified accessibility check on a sample of their public sector websites. In the UK this will be approximately 2,000 of 44,000 websites covering education, health, welfare, local and central government services. Sampling will be guided by complaints escalated to the government as well as feedback from representatives of the disabled community. The process is designed to raise awareness and encourage sharing of best practice as well as to ensure compliance as part of the commitment "to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility" (EC, 2016) by ratifying the UNCRPD.

Monitoring is underpinned by the new requirement for organisations to publish accessibility statements on their websites. Accessibility statements should provide transparency on compliance. The required format also advances the provision for disabled people, through a requirement to describe in non-technical terms any barriers to accessing content, what works, how to contact the organisation for further assistance and how to raise issues with the governments' monitoring body (EU, 2018). Governments must publish a sample of statements, which the UK government have supplemented with user research to make it as clear as possible to understand (GDS, 2019a). As a result, for the first time, disabled people will have a clear route for reporting accessibility issues, requesting alternative formats *and* reporting non-compliance issues to external monitoring organisations. This has been welcomed by disability advocacy organisations and professionals supporting inclusive practices as a means to both improve transparency and improve accessibility awareness amongst website users (JISC, 2019; GDS, 2018).

But what of Brexit? Well, it's complicated. The regulations have been passed into the UK statute – they are part of UK law, irrespective of Brexit. However, a major concern remains: as the UK leaves the EU, the UK Government will be essentially monitoring its own performance. There will be no supra-level oversight, which - given the UN's critical assessments of the UK's performance on austerity, disability and also *digital accessibility* - has resulted in scepticism from many quarters. The UK will lack the safeguards provided by an independent regulator.

There are further issues for the UK. The *Public Sector Web Accessibility Regulations* divide the role of monitoring and enforcement. Monitoring will be undertaken by the UK Government's Cabinet Office. Enforcement will be subsumed into the Equality and Human Rights Commission's (EHRC) existing role as the regulatory body for the Equality Act (2010). It seems that these two aspects, monitoring and enforcement, have been separated to leverage the EHRC legal framework to enforce Equality related legislation, rather than assist with implementing the regulations per se. However, the EHRC framework has already proven ineffective, failing to ensure that digital platforms do not indirectly discriminate against disabled users (Harwood, 2016). And there are further calls for the role of the EHRC itself to be strengthened, with an identified need for a "robust enforcement with accountability for inaction, lack of co-operation or breach of the requirements" (GDS, 2018). Responding, the UK Government "agrees with the need for clear, robust and proportionate enforcement mechanism" (GDS, 2018). However, in the subsequent 12 months, the Government has provided few details of how the monitoring and enforcement procedures will work (see GDS, 2019b). As a result, there is confusion regarding which types of organisations will be monitored, how timelines will be managed alongside other complaints and regulatory frameworks, and the timescales for enforcement actions. Without a clear mechanism for creating a 'critical regulatory community' (Meidinger, 1987) to facilitate raising expectations, knowledge and standards, these regulations may join earlier equality legislation in having little impact on the digital ecosystem. In addition, the EHRC's current powers are further limited – it can only address issues of non-compliance in public organisations who have not complied with the *Public Sector Equality Duty* - a separate responsibility to these new accessibility regulations. Meanwhile, the EHRC's '*Litigation and Enforcement Policy 2019-2022*' (Nov, 2019), makes no mention of its new responsibilities or priorities to address web accessibility under these regulations.

In sum, the proposed monitoring and regulatory framework is missing many of the important factors that are required to encourage an accessibility compliant culture. Many digital accessibility experts would shy away from encouraging a 'compliance culture' in the real fear that it will encourage rote box-ticking or automated, overtly-technicist approaches to accessibility. Compliance culture can also be seen to be in tension with innovation. It may occlude the socio-technical nature of disabled experience online, and overlook multi-dimensional issues related to supporting disabled people and their communities. Nonetheless, the need to establish an accessibility baseline remains pressing. Standards compliance is a powerful tool to this end. Without these accessibility fundamentals in place, disabled people are increasingly excluded from online opportunities to apply for everything from jobs, benefits and education, to banking and health services, as well as the wider social and economic benefits that accrue through online activities.

A sea-change in accessibility culture and accessibility education is needed to build digital capacity, particularly within the workplace, and within disciplines of computer science, Human Computer Interaction and web development. To this end we are undertaking new research into the teaching of accessibility (<http://TeachingAccessibility.ac.uk>). At this crucial moment in digital accessibility regulation, however, it remains to be seen whether the UK can realise the early promise of the Web for disabled people and deliver the accessible digital services that are so essential for digital and social inclusion.

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