

<b>Report to:</b>	SMT
<b>Report by:</b>	Erin Gray, Head of Policy and Information
<b>Meeting Date:</b>	4 February 2021
<b>Subject/ Title:</b> (and VC no)	Website accessibility statement updates (VC144181)
<b>Attached Papers</b> (title and VC no)	C2 Accessibility Statement – Commissioner’s website (VC 138618) C2 Accessibility Statement – Statistics Portal (138614)

## Purpose of report

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1. To seek Senior Management Team (SMT) approval of reviewed versions of the Scottish Information Commissioner’s website accessibility statements, following ad hoc review changes to reflect further improvements.

## Recommendation and actions

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2. I recommend that the SMT:
  - (i) approve the updates to the two attached website accessibility statement key documents following their ad hoc reviews
  - (ii) agree the key document recommendations (see the record management section below)
  - (iii) agree the recommendations set out in the publication section of this report.

## Executive summary

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3. In accordance with the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018 (‘the Regulations’), since 23 September 2020 all public sector bodies have been required to ensure any websites they operate are accessible – defined as ‘perceivable, operable, understandable and robust’.
4. In order to meet this legal requirement, 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.
5. 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.
6. Public bodies are responsible for ensuring their websites meet the relevant accessibility requirements, even if they have outsourced support or maintenance to a supplier.

7. 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 will be enforced**

8. 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.
9. 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.
10. 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 statements and changes proposed**

11. The Accessibility Statement bodies publish 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)

12. The Commissioner published one accessibility statement for [www.itspublicknowledge.info](http://www.itspublicknowledge.info) and one for the statistics portal in September 2020. They are due for formal review in June 2021, but have been amended now to reflect recent developments and improvements. Changes have been tracked and remain visible for ease of approval.
13. Within the Accessibility Statement relating to the Commissioner's website (VC 138618) these changes are as follows:
  - (i) Addition of the email newsletter and sign-up form (introduced in late 2020) to the non-compliance section and to the introductory list of aspects of the website that are not fully accessible. These are developed by a third-party supplier and do not meet accessibility requirements. We will work with the supplier across summer 2021 to determine what changes can be made.
  - (ii) In the non-compliance section, removal of the 'Structure of Content' issues, since internal work to address headings and structures in the decision pages is complete (with the exception of those issues covered in the disproportionate burden section).
  - (iii) Also in the non-compliance section, a change of date for the anticipated completion of the new cookie notice, to 30 April 2021.
  - (iv) In the disproportionate burden section, simplifying and updating the information regarding 'HTML Validation', and some minor clarifications including changing the 'Online Forms' heading to 'Appeal Portal Forms' and changing the 'Structure of Content' heading to 'Decisions – Headings and Tables'. These changes are to ensure it is clear these do not overlap with the newsletter section added as per (i) above.
14. Within the Accessibility Statement relating to the Statistics Portal (VC 138614) the changes are as follows:
  - (i) Removing the 'Page Language' issue from the non-compliance section as it has been resolved
  - (ii) Replacing text relating to (i) above to make it clear that there is now no content on the statistics portal which is not compliant with the regulations, other than the issues identified as 'disproportionate burden' in the relevant section.
  - (iii) Similarly, in the 'What we are doing to improve accessibility' section near the end of the document, removing a line about addressing remaining issues, as this is complete.
15. As 'approver' for these documents the SMT is invited to approve these revisions to both documents so up to date and accurate statements can be made available on our website, in line with requirements of the Regulations.

## Risk impact

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16. 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.
17. 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 in paragraphs 9 – 10 above.
18. The review and update of the accessibility statements will mitigate the potential risk of non-compliance with the statutory/regulatory requirements.

19. The internal 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**

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20. 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.
21. 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.
22. 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**

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

## **Resources impact**

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24. There is no additional resource impact arising from this committee report or from the documents submitted for approval.

## **Operational/ strategic plan impact**

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25. Work conducted earlier this year to address compliance with the Regulations was included within operational plans for 2020-21, as is 'discovery' preparatory work for a potential future website replacement. Both areas of work are required for delivery of aims set out in the Commissioner's Strategic Plan.
26. As noted in September 2020, development and build of a replacement website will be required in order to ensure delivery of the Strategic Plan beyond 2020-21, as it is an essential communication tool for all areas of the Commissioner's work.

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

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27. The documents submitted for approval are key documents and will be updated on the Register of Key Documents, as soon as possible.

28. I am the responsible manager for the documents, and SMT is 'approver'.
29. The updated documents will be published on the accessibility page of the Commissioner's website when relevant key document actions have been completed.

### Consultation and Communication

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30. This paper and the attached papers have been prepared in consultation with the lead member of the Policy and Information Team on website accessibility, and the SMT.
31. If approved the new versions of the accessibility statements and this paper will be published on the website.

### Publication

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32. I recommend that this committee report is published in full.
33. 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).