

The Web Accessibility Directive

A legal viewpoint on
practical ramifications for
Irish further and higher
education providers

 **ahead**
creating inclusive environments in education
and employment for people with disabilities



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Irish further and higher
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The Web Accessibility Directive

The EU Web Accessibility Directive [[Directive \(EU\) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies](#)] is the result of efforts to address online accessibility issues across the European Union. The Directive requires all public sector websites and applications in EU member states to implement, enforce, and maintain a uniform set of accessibility standards. The Directive aims to ensure that all citizens can access services and participate in society and promote and facilitate accessible digital developments. It also seeks to mitigate the need for individuals to take legal action to ensure basic access.

The Transposition of the Web Accessibility Directive into Irish Law

In September 2020, Ireland transposed the new EU Web Accessibility Directive into Irish Law. This directive strengthened existing accessibility regulation and imposed new responsibilities on stakeholders of AHEAD including public sector employers, further education colleges and training centres and higher education institutions.

This transposition of the directive into Irish Law led to many questions on the part of Further Education and Training practitioners and Higher Education practitioners. In response to this uncertainty around the scope of the directive, AHEAD commissioned a legal opinion focused on the meaning and implications of the Directive for FET and HE practitioners. The questions within this document, addressed by Katie Ridge B.L., were gathered and compiled in consultation with FET and HE staff. They represent some of their main concerns around the responsibilities they have under the Directive.

The information provided here represents the legal viewpoint relating to FET and HE provider responsibilities under the Directive. It is not a guide to accessibility and does not necessarily reflect AHEAD's view on achieving a holistic approach to accessibility.

Further resources are available on the AHEAD website to support practitioners in making their teaching and learning materials accessible.

Disclaimer

This material is for general information purposes only and does not constitute legal or other professional advice on behalf of the author or AHEAD.

Specific legal advice should be sought on any particular matter. Any and all information is subject to change without notice. No liability whatsoever is accepted by the author or AHEAD for any action taken in reliance on the information in this briefing.

The Web Accessibility Directive FAQ

1. Tell us about the Web Accessibility Directive and its transposition into Irish law.

The Web Accessibility Directive:

The EU Web Accessibility Directive [[Directive \(EU\) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies](#)] was born out of an ongoing effort to comprehensively address accessibility issues across the European Union. The Directive requires all public sector websites and applications in EU member states to implement, enforce, and maintain a uniform set of accessibility standards. 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.

This journey started in the early 2000s and resulted in initiatives like the European Disability Strategy [2010] and the Mandate 376 Accessible ICT Procurement Toolkit; more recently [June 2018] the Web Content Accessibility Guidelines 2.1 [WCAG 2.1] were published representing the most wide-reaching overhaul of accessibility standards at that time. This progress culminated in the first implementation deadline of the EU Web Accessibility Directive in September 2018, when EU member states were required to transpose the directive into their national laws.

In essence the core of the Web Accessibility Directive is, essentially, the Web Content Accessibility Guidelines [WCAG 2.1]; the Directive itself does not actually contain any of the rules that websites and apps need to follow to stay in compliance. To find the regulations, readers are signposted to Standard EN 301 549 of the Accessible ICT Procurement Toolkit, which itself refers to WCAG 2.1 standards for further clarification. The important point is that a Directive is a legal act of the EU that requires member states to achieve a result, this makes the objective of the provision of Web Accessibility by public bodies binding, which moves the provision of inclusive accessibility from unenforceable guidelines to mandatory legal requirements.

Transposition into Irish Law:

The implementation of the Directive requires the following steps:

- **Transposition Phase:** As of September 23, 2018, Member states must have a reasonable plan in place for incorporating the Accessibility Directive into their national legislation.

- **Implementing Acts:** As of December 23, 2018, Member states must have each of the following in place for all public sector websites and apps, based on model statements and methods posted by the European Commission:
 - A publicly posted, regularly updated accessibility statement explaining accessible content standards and providing users with a link to provide feedback
 - An accessible feedback mechanism
 - An enforcement procedure detailing penalties and processes for non-compliance
 - Standards for monitoring methodology and reporting
 - Uniform technical specifications for mobile applications

- **Compliance phase:** The deadlines for full EU Website Accessibility Directive compliance are:
- New websites (published after September 23, 2018):
Effective September 23, 2019
 - Older websites (published before September 23, 2018):
Effective September 23, 2020
 - Mobile applications: Effective June 23, 2021

The Web Accessibility Directive makes it clear that it *'aims to approximate the laws, regulations and administrative provisions of the Member States relating to the accessibility requirements of the **websites and mobile applications of public sector bodies**'*. From a technical perspective, the Web Accessibility Directive establishes its scope of application by reference to the EU public procurement rules. In particular, Art 3(1) of the Web Accessibility Directive defines 'public sector bodies' as *'the State, regional or local authorities, **bodies governed by public law, as defined in point (4) of Article 2(1) of Directive 2014/24/EU, or associations formed by one or more such authorities or one or more such bodies governed by public law, if those associations are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character**'*.

What is Required for Compliance from Member States?

1. An Accessibility Statement

Public sector bodies within the EU member states must comply by providing a detailed and comprehensive accessibility statement on a regular basis. This statement must clearly outline:

- an explanation for any inaccessible elements that may still be present on the website or application, as well as information on alternatives for access;
- Guidelines on how users can provide feedback on failures of access and how they can request for information that may be excluded from the scope of the Directive;
and
- a link to a complaint mechanism if the response provided is inadequate to the user's needs.

2. Monitoring

Compliance with the Directive should be monitored using a methodology that was adopted by the Commission by 23 December 2018. According to the official summary of the Directive, the methodology should include:

- the periodicity of the monitoring and website sampling arrangements;
- the sampling of web pages, of the content on those pages and of the content of mobile apps;
- a description of the way to determine compliance;

- where deficiencies are found, a mechanism to help public sector bodies correct them; and
- arrangements for automatic, manual and usability tests.

3. Reporting

The member states will have to submit a report compiled from monitoring activities, detailing the information and results of the enforcement of the Directive by the 23 of December 2021 and the subsequent 3 years after. The content of all the reports will be made public in an accessible format. The application of the Directive will be reviewed by the Commission by 23 June 2022.

The Irish Government implemented Regulations on the accessibility of Websites and Mobile Applications under [S.I. No. 358/2020](#) in September 2020.

2. Who does this new accessibility legislation affect?

In terms of a cultural shift the legislation has implications for all service providers and users. In terms of any legal implications for service providers and service users the legislation applies in respect of the websites, [independently of the device used for access thereto], and mobile applications of public sector bodies. The Directive lays down the rules requiring Member States to ensure that websites, independently of the device used for access thereto, and mobile applications of public sector bodies meet the accessibility requirements set out in Article 4.

SI 358/2020 [The 2020 Regulations] defines a “public sector body” as meaning the State, a regional or local authority, a body governed by public law or an association formed by one or more such authorities or one or more such bodies governed by public law, if that association is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character.

The 2020 Regulations apply to most public sector bodies with the following exceptions:

The 2020 Regulations do not apply to websites and mobile apps of public service broadcasters or any other body fulfilling a public service broadcasting remit.

They do not apply to websites and mobile apps of certain types of non-governmental organisations (NGOs), which the Regulations state are NGOs “that do not provide services that are essential to the public, or services that specifically address the needs of, or are meant for, persons with disabilities.”

Some types of content are temporarily excluded from the scope of the Directive if they are not needed for administrative processes and this is reflected in the 2020 Regulations. Examples include: office file formats (such as PDF documents) published before September 23, 2018; pre-recorded time-based media (such as audio-only and video-only) if published before September 23, 2020; and the content of archived websites. However, public sector bodies will still have to make this content accessible on request.

Content of extranets and intranets i.e. websites that are only available for a closed group of people and not to the general public as such, published before September 23, 2019 is also excluded from the new accessibility directive, until such websites undergo a substantial revision.

Permanent exclusions to the Regulations include live, time-based media, plus online maps and mapping services (as long as essential information is provided in an accessible digital manner for maps intended for navigational use). Other exclusions include some third-party content that is neither funded nor developed nor under the control of the public sector body concerned and the content of websites and mobile applications that are archival i.e. they only contain content that is neither needed for active administration processes nor updated or edited after 23rd September 2019.



3. How does the Web Accessibility Directive define the accessibility of a web platform or the content it houses? What standards govern what is and is not accessible?

The Web Accessibility Directive sets the minimum requirement as standard EN 301 549, which incorporated a number of Web Content Accessibility Guidelines [WCAG] 2.0 success criteria in setting accessibility standards. The WCAG 2.0 success criteria are mirrored in WCAG 2.01 and will be carried into WCAG 2.2 which is expected to be published during 2021. [WCAG 2.0](#) and [WCAG 2.1](#) are stable, referenceable technical standards. They have 12-13 guidelines that are organized under 4 principles: perceivable, operable, understandable, and robust [POUR]; in brief the Directive provides that perceivability means that information and user interface components must be presentable to users in ways they can perceive; operability, means that user interface components and navigation must be operable; understandability, means that information and the operation of the user interface must be understandable; and robustness, means that content must be robust enough to be interpreted reliably by a wide variety of user agents, including assistive technologies.

Those principles of accessibility are translated into testable success criteria, such as those forming the basis of the European standard EN 301 549 V1.1.2 'Accessibility requirements suitable for public procurement of ICT products and services in Europe' (2015-04) (European standard EN 301 549 V1.1.2 (2015-04)), via harmonised standards and a common methodology to test the conformity of content on websites and mobile applications with those principles. That European standard was adopted on the basis of mandate M/376 issued by the Commission to the European standardisation organisations.

For each guideline, there are testable success criteria, which are at three levels: A,[lowest] AA, and AAA [highest].

For a short summary of the WCAG 2 guidelines, see [WCAG 2.1 at a Glance](#).

The current harmonised standard is [EN 301 549 V2.1.2 \(2018-08\) PDF](#), that is in line with the most recent [Web Content Accessibility Guidelines: WCAG 2.1](#).

This requires that websites and mobile apps of public sector bodies meet all Level AA Success Criteria to be compliant with the 2020 Regulations.

Whereas Level A includes the most basic accessibility features, such as alternate text for images and other non-text components and captions for videos, Level AA includes additional features such as an audio description for videos, navigation consistency and resizable text in any browser.

WCAG 2.1 [Level AA] provides 17 additional success criteria to address:

➤ [mobile accessibility](#)

➤ people with low vision

➤ [people with cognitive and learning disabilities](#)

These requirements were applicable from 23 September 2019 for websites published after 23 September 2018, and from 23 September 2020 for websites that predated the Directive. All apps will have to comply from 23 June 2021. Further and Higher Education bodies will also have to prepare and regularly update a detailed, comprehensive and clear accessibility statement on the compliance of their websites and mobile applications with SI 358/2020 and subject themselves to the monitoring - National Disability Authority [NDA], Reporting - Department of Environment, Climate and Communication [DECC] and Enforcement Workplace Relations Commission [WRC] bodies in accordance with the 2020 Web Accessibility Regulations.

4. How does it strengthen and interact with the existing regulation in place regarding accessibility for public bodies (e.g. the Code of Practice on Accessibility of Public Services and Information Provided by Public Bodies and related procurement regulations (outlined here)?

The existing legal framework in terms of disability and equality rights include:

- **Article 13 of the Treaty of Amsterdam:** Enabled the EC to legislate to combat discrimination based on gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation.

- This prompted the **Racial Equality Directive 2000/43** and the **Gender Goods and Services Directive 2004/113**.

- **The Employment Equality Acts 1998-2015.**

- **The Equal Status Acts 2000-2015.**

➤ **The Disability Act 2005:** Applicable only to public bodies;

The Disability Act contains a specific accessibility requirement for public sector organisations. It states in Section 28:

Where a public body communicates in electronic form with one or more persons, the head of the body shall ensure, that as far as practicable, the contents of the communication are accessible to persons with a visual impairment to whom adaptive technology is available.

➤ The National Disability Authority has produced a **Code of Practice on Accessibility of Public Services** and Information Provided by Public Bodies. This further expands on the obligations of public sector organisations in the provision of accessible services. The Code is a statutory instrument and, as such, has legal effect: Compliance by a public body with an approved code of practice shall be deemed to be compliance with the relevant provision of this Act.

➤ **The UN Convention on the Rights of Persons with Disabilities.**

- **Irish Human Rights and Equality Commission Act 2014 - Section 42** of the Act introduced a public sector equality and human rights duty. The S42 duty requires that public bodies “have regard to the need to; (a) eliminate discrimination, (b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and (c) protect the human rights of its members, staff and the persons to whom it provides services.” The duty covers the totality of the body’s functions as an employer, policy maker, service provider, and procurer of services.

- **The Accessible ICT Procurement Toolkit** provides for the standardisation of Accessibility requirements suitable for public procurement of ICT products and services in Europe.

- **The Web Content Accessibility Guidelines [WCAG]**

- **The EU Web Accessibility Directive** [[Directive \(EU\) 2016/2102](#)] of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies

- **S.I. No. 358/2020**

As a consequence of the Web Accessibility Directive, and the Regulations made thereunder, accessibility will be centrally monitored meaning the onus is no longer exclusively on persons with a disability to issue legal challenges to digital exclusion. Public sector bodies comply with the 2020 Regulations if for all websites and mobile apps they:

- Meet the relevant parts of the harmonised European standard [EN 301 549 V2.1.2 \(2018-08\)](#). This is the same as meeting all the Level AA Success Criteria from the international guidelines [WCAG 2.1](#).
- Publish and maintain an Accessibility Statement about their websites or mobile apps.

The Regulations provide that public sector bodies shall, in accordance with Regulation 3, take necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust which is driving the WCAG 2.0 Principles of Accessibility [POUR].

While these requirements are not categorised as ‘reasonable accommodations’ [as are measures in the EEA and ESA that would allow for equality of access], the only objective justification provided for in the 2020 Regulations in terms of the public sector body not being able to meet website and/or mobile app accessibility requirements is the justification of ‘disproportionate burden’ which is provided for in [section 5 \(1\) of the Regulations](#).

5. What is covered in the scope of the law on the general public websites and communications of public sector bodies, further and higher education centres and institutions?

The 2020 Regulations apply to most types of content including; office file formats (Word, PowerPoint and PDF documents), videos, forms, as well as intranets, extranets and their contents.

Some types of content are exempt, such as live media and maps that are not used for navigational purposes. Exemptions also apply to some types of content published before a particular date:

- office file formats published before 23 September 2018, unless, as stated in the 2020 Regulations, “such content is needed for active administrative processes relating to the tasks performed by the public sector body concerned”
- pre-recorded time-based media published before 23 September 2020. This could include videos or audio recording of events
- content of websites and mobile applications qualifying as archives
- third party content that is not funded by or under the control of the public sector body - for example, social media ‘like’ buttons
- online reproductions of items in heritage collections that cannot be made fully accessible

- content on intranets or extranets published before 23 September 2019 until such websites undergo a substantial revision
- content of websites and mobile applications qualifying as archives, meaning that they only contain content that is neither needed for active administration processes nor updated or edited after 23 September 2019.

The 2020 Regulations define that a “body governed by public law” means a body that has all of the following characteristics:

- it is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- it has legal personality; and
- it has any of the following characteristics –
 - it is financed, for the most part, by the State, a regional or local authority, or by another body governed by public law;
 - it is subject to management supervision by an authority or body referred to in subparagraph (i); or
 - it has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, a regional or a local authority, or by another body governed by public law;

It is clear that Irish further and higher education centres and institutions meet these requirements and accordingly are considered bodies governed by public law which now necessitates that they comply not only with procurement rules but also with web accessibility requirements. This should make them 'perceivable, operable, understandable and robust' [Art 4 Web Accessibility Directive].

The Web Accessibility Directive makes it clear that it 'aims to approximate the laws, regulations and administrative provisions of the Member States relating to the accessibility requirements of the websites and mobile applications of public sector bodies'. From a technical perspective, the Web Accessibility Directive establishes its scope of application by reference to the EU public procurement rules.

5. a) Is text on general web pages covered? Are videos and images covered? Are all downloadable documents covered?

The Directive applies to public bodies' websites, intranets, virtual learning environments (VLE's), SharePoint, timetabling systems, library database, e-books, electronic journals, embedded images or videos etc. The Directive provides that accessibility should be understood as principles and techniques to be observed when designing, constructing, maintaining, and updating websites and mobile applications in order to make them more accessible to users, in particular persons with disabilities.

The Directive, while encouraging public sector bodies to make all content accessible, is not intended to limit the content which public sector bodies place on their websites or in their mobile applications to accessible content alone. Whenever non-accessible content is added, public sector bodies should, to the extent reasonably possible, add accessible alternatives on their websites or in their mobile applications.

5. b) Are third-party plugins and content used on the website covered e.g. social media feeds, news feeds etc.?

Where websites and mobile applications allow for the subsequent incorporation of additional third-party content, for example an email program, a blog, an article that allows users to add comments, or applications supporting user-contributed content [another example would be a page, such as a portal or news site, composed of content aggregated from multiple contributors, or sites that automatically insert content from other sources over time, such as when advertisements are inserted dynamically], provided that the third-party content is neither funded nor developed by the public sector body concerned nor under its control, it is excluded from the scope of this Directive. *Such content should, in principle, not be used if it hinders or decreases the functionality of the public service offered on the website or mobile application concerned. Where the purpose of content of websites or mobile applications of public sector bodies is

to hold consultations or to organise forum discussions, that content cannot be considered as third-party content and should therefore be accessible, except in the case of user-contributed content which is not under the control of the public sector body concerned.

5. c) Is content posted on the social media profiles of public sector bodies, further and higher education centres and institutions covered? Are email communications sent by public bodies included?

If the content posted on the social media profiles of the public sector body is by a third party, not under the control of the public sector body concerned then it is excluded from the Regulations.

Emails sent by public bodies is provided for in the Directive as follows:

'(30) ... websites and mobile applications are sometimes created into which additional content may be subsequently incorporated, for example an email program, a blog, an article that allows users to add comments, or applications supporting user-contributed content. Such third-party content, provided that it is neither funded nor developed by the public sector body concerned nor under its control, should be excluded from the scope of this Directive.'

Such content should, in principle, not be used if it hinders or decreases the functionality of the public service offered on the website or mobile application concerned.

5. d) Is public live streaming content such as webinars covered e.g. do platforms used to host such webinars need to be accessible and do live captions need to be provided?

Live media are in the exempted group for the purpose of the Regulations; live lectures do not need to be captioned. However, if they are recorded and are made available to students they would need to be captioned [as they are in effect now a video].

6. Is the content of Learning Management Systems (LMS) and other protected 'log in' platforms covered?

Content on intranets or extranets published before 23 September 2019 are exempt until such websites undergo a substantial revision: The regulations don't define 'substantial changes' so institutions must make a decision based on the circumstances in each case. It is unlikely that uploading an occasional new document to the VLE platform would be considered to be a substantial revision. Nonetheless, where small numbers of single changes are made and documents are uploaded this can add up to substantial change at some point. In many instances it will be fairly clear that, where large amounts of website content are being published and changed, this triggers the legal obligation to meet the accessibility requirements.

The recommended approach is to ensure compliance with the Regulations when making any amendments to websites or mobile applications.



6. a) Are word files, PDFs, videos and other learning materials uploaded by individual teachers and lecturers for access by learners covered?

Under normal circumstances any office file formats are included within the scope of the regulations as long as they have been published on or after 23 September 2018.

However, where a VLE is considered to be an extranet [or intranet] under the Regulations any content on the VLE before 23 September 2019 doesn't have to be compliant with the regulations until the VLE undergoes a substantial revision. It is unlikely that uploading an occasional new document to the VLE would be considered to be a substantial revision.

6. b) In terms of video, what is the accuracy standard to meet for accessibility e.g. are good quality automated captions considered good enough to meet the standard or are 100% accurate captions developed by a human required?

The scope of the regulations include video embedded on your websites. WCAG 2.1 provides:

1.2.4 Captions (Live)

Level AA

Captions are provided for all live audio content in synchronized media.

1.2.5 Audio Description (Prerecorded)

Level AA

Audio description is provided for all prerecorded video content in synchronized media.

Pre-recorded Video and Audio (lecture capture, learning videos...)

For pre-recorded audio and video, text in the form of transcriptions and captions and in some cases audio descriptions are crucial to meet the accessibility requirements.

Pre-recorded audio (only audio, e.g. podcasts)

Alternative Text Content	Subtitling / Captions	Audio Description	Transcription
Required	Not required	Not required	Required

Pre-recorded moving pictures (video only, e.g. animations without sound)

Alternative Text Content	Subtitling / Captions	Audio Description	Transcription
Required	Not required	Required if there is no transcription	Required if there is no audio description

Pre-recorded films (lecture capture, tutorials, learning videos...)

Alternative Text Content	Subtitling / Captions	Audio Description	Transcription
Required	Required	Required, unless all visual information is also audible	Not required unless the film contains interactive elements

➤ According to the WCAG, the following success criteria (SC) apply:

[SC 1.2.1 Audio or video-only \(pre-recorded\)](#)

[SC 1.2.2 Captions \(pre-recorded media\)](#)

[SC 1.2.3 Audio Description \(pre-recorded media\)](#)

➤ In practice, this means that lecture capture, learning videos and other video-based media can be made digitally accessible by adding alt-texts and captions. Technology such as [automatic speech recognition](#) can be used to automate big parts of the captioning process.

The Directive doesn't apply to content you link to, nor does it apply to social media content. For many further and higher education public bodies they will be sourcing videos from external providers. In such instances meeting the WCAG 2.1 AA standards must be part of the providers' contractual obligations. In order to ensure this you may need to draw up a procurement contract framework to include something like:

Services procured, commissioned or designed by the Supplier shall comply with:

➤ The World Wide Web Consortium (W3C),

➤ Web Accessibility Initiative (WAI),

➤ Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA

6. c) Given the exception for 'live, time-based media', are live lectures/classes covered under the scope of the directive?

Live time-based media is specifically excluded from the scope of the EU Directive.

6. d) What about recordings of live lectures posted for learners to watch back at a convenient time? Do, for example, education centres and institutions have to provide captions/transcript for these video recordings and if so, what is deemed accessible in this case e.g. is auto-captioning on video acceptable?

Live lectures (e.g. those delivered via Blackboard/moodle) do not have to be captioned. However, if they are recorded, and you wish to make these recordings available to learners, then they would need to be captioned within 14 days of the live event. This is because after 14 days, they are treated in the same category as other videos. Since the costs of professional manual captioning can be significant and captioners are in high demand, institutions may deem that provision of this standard of captioning of all asynchronous lecture videos can be considered a disproportionate burden, and instead provide automated captioning.

However, where an institution is asserting ‘disproportionate burden’, the transposition of the directive indicates that the institution must “carry out an assessment of the extent to which compliance with those accessibility requirements would impose on it such a burden” and highlight the reasons for the assertion in the accessibility statement. See Q11 for further information on ‘disproportionate burden’.

6. e) Are, for example, ‘log in’ platforms used by public sector bodies for recruitment and selection and the content housed on them covered?

While the term ‘website’ isn’t defined in the regulations themselves, guidelines from the European Commission (EC) set out criteria for defining and measuring websites.

A website is a collection of related web pages:

- Sharing common characteristics (theme, navigation and visual aspects);
- Identified (internally and/or externally) by a site name;
- Managed and communicated as a single entity;
- Hosted on a specific instance of a web server.

The term ‘website’ in this context covers all systems delivered through a browser (such as HR, library and accommodation systems) unless they’re exempt.

6. f) Is 'user generated' content covered e.g. content that students post in class forums?

This would come under the description of third-party content. For example, user-generated content, such as a photo without alternative text or a video without captions posted on a forum would both be exempt from the directive's accessibility requirements, but the forum itself would have to be accessible.

7. What about third-party content and services? Is there a responsibility on public sector bodies, further and higher education institutions to ensure that content housed on third-party services they use is also accessible?

The Regulations place the legal obligation of compliance on the public sector body. Any third-party content that is neither funded nor developed by, nor under the control of the public sector concerned is exempt from the regulations. But if you've made decisions about the third-party content, for example by commissioning or specifying it, the content will come within the scope of the regulations.

7. a) Key example – the libraries in further and higher education centres and institutions would often use third-party academic publishing platforms hosted via institutional websites to give learners access to academic titles and research journals. Is there a responsibility on these institutions to ensure, through procurement or otherwise, that the titles held on these platforms are also accessible?

Guidance required on buying or licensing a third-party product could be considered to be funding the product and this would oblige the further/ higher education institutions to meet the accessibility requirements for those materials – from e-books and e-journals to HR systems – by working with the supplier as necessary to achieve compliance.

Alternatively, you might need to source an equivalent accessible alternative but if none is available, you would need to explain this in the accessibility statement and justify it under 'disproportionate burden'. In this case it would be good practice to provide workarounds while urging the publisher to make their product accessible in the procurement process.

For outsourced websites or mobile applications and services with third-party content that your centre or institution develops, controls and/or funds you'll need to work with the service provider to ensure compliance. The Directive provides that:

'(38) If the accessibility requirements set out in this Directive are not applicable, then in accordance with Council Directive 2000/78/EC, the UN Convention and other relevant legislation, the requirements of 'reasonable accommodation' will still apply and should be provided for where needed, in particular in the workplace and in education.'

Accordingly, if the content is not caught by the new accessibility Regulations you have a duty to make reasonable accommodations [subject to the disproportionate burden test] under the Disability Act, the Equality Legislation and the IHREC Act section 42 public sector equality and human right duty.

8. Does the Directive cover staff-facing intranets and content contained within them, e.g. ‘log in’ platforms used to host for example staff policies, HR systems, communication portals etc?

These are subject to the special transitory rule of Art 1(4) (g) of the Web Accessibility Directive. The Directive does not apply to the content of extranets and intranets, that is to say, websites that are only available for a closed group of people and not to the general public as such, published before 23 September 2019, until such websites undergo a substantial revision; The regulations don't define 'substantial changes' so institutions must make a decision based on the circumstances in each case. In many instances it will be fairly clear that, where large amounts of website content are being published and changed, this triggers the legal obligation to meet the accessibility requirements.

9. Where inaccessible material that is granted an exception under the directive exists (e.g. documents published before September 23, 2018), is there any onus on institutions to make these materials accessible on request?

'(38) If the accessibility requirements set out in this Directive are not applicable, then in accordance with Council Directive 2000/78/EC, the UN Convention and other relevant legislation, the requirements of 'reasonable accommodation' will still apply and should be provided for where needed, in particular in the workplace and in education.'

Accordingly, if the content is not caught by the new accessibility Regulations you have a duty to make reasonable accommodations [subject to the disproportionate burden test] under the Disability Act, the Equality Legislation and the IHREC Act section 42 public sector equality and human right duty.



10. The Directive introduces a requirement for public sector bodies and further and higher education institutions to have a web accessibility statement. What are these statements and what should they cover?

The Directive [Article 7] transposed by the Regulations requires you to “produce an accessibility statement”. The 2020 Regulations provide:

Accessibility Statement:

7. 1. Public sector bodies shall prepare and regularly update a detailed, comprehensive and clear accessibility statement on the compliance of their websites and mobile applications with these Regulations.
2. The accessibility statement in respect of a website shall –
 - a. be in accessible format;
 - b. be prepared using the model accessibility statement referred to in Commission Implementing Decision EU 2018/1523 and,
 - c. be published on the website concerned.

3. The accessibility statement in respect of a mobile application shall –
 - a. be in an accessible format;
 - b. be prepared using the model accessibility statement referred to in Commission Implementing Decision (EU) 2018/1523, and
 - c. be available on the website of the public sector body that developed the mobile application concerned or alongside other information available when downloading the application.
4. An accessibility statement referred to in paragraph (2) or (3) shall include –
 - a. an explanation concerning those parts of the content of the website or mobile application, as the case may be, that are not accessible, the reasons for that inaccessibility and, where appropriate, the accessible alternatives provided;
 - b. a description of, and a link to, a feedback mechanism enabling any person –
 - i. to notify the public sector body concerned of any failure of any of its websites or mobile applications to comply with the accessibility requirements set out in Regulation 4,
And
 - ii. to request information in relation to those parts of the content that is inaccessible notwithstanding that the content concerned may be content referred to in Regulation 3 (3) or 6, and

c. a link to the redress or complaint provisions, or both, as the case may be, of the [Equal Status Act 2000](#) (No. 8 of 2000) and the [Disability Act 2005](#) (No. 14 of 2005) to the extent to which they apply to the body concerned.

5. Public sector bodies shall give an adequate response to a notification or request referred to in paragraph (4)(b) within a reasonable period of time.

How this Accessibility Statement is constructed could be guided by [the FACTS Model](#)

The **FACTS** model is based on 5 characteristics of a good accessibility statement:

- **Formative:** it makes users smarter at exploiting accessible content.
- **Actionable:** it makes users resilient, helping them deal with inaccessible content.
- **Compliant:** it keeps the organisation safe by covering the legal requirements.
- **Transparent:** it keeps disabled users on board by being honest and accountable.
- **Supportive:** it makes users confident by clarifying support options.

Good practice would be to carry out a separate assessment in each case and review them all once a year. The aim of the accessibility statement is to ensure that users are aware of the parts of the website that are not accessible and to assess the offered alternatives.

10. a) Is there an onus on public sector bodies, further and higher education centres and institutions to include route to complain or to request that an accessibility barrier be addressed?

SEE ABOVE

10. b) Do public sector bodies, further and higher education centres and institutions need to have one statement covering all of their web platforms, or is there a need to have one statement for each of their different platforms e.g. for a further education institution, one for the public website and another for the Learning Management System?

The regulations require you to “produce an accessibility statement”. One accessibility statement could be sufficient for more than one platform but, if accessibility differs from one of your institution’s platforms to another, you must provide specific accessibility information to tell users about those differences.

10. c) Do web accessibility statements need to be provided by institutions for third-party platforms/services housed via their own websites e.g. academic publishing platforms.

It would appear that in accordance with the 2020 Regulations, Web accessibility statements need not be provided by third party platforms housed via their own website as they are exempt per Regulation 3 (e):

3. These Regulations do not apply in respect of the following content of websites and mobile applications of a public sector body: e) third-party content that is neither funded nor developed by, nor under the control of, the public sector body concerned.

11. The law includes an exception where making something accessible would prove to be a disproportionate burden? What does this mean and what examples can be given on what may or may not be a legitimate case of disproportionate burden being used?

Disproportionate burden is provided for in Section 6 of the 2020 Regulations:

6.1. A public sector body shall apply the accessibility requirements set out in Regulation 4 to the extent to which those requirements do not impose a disproportionate burden on the public sector body for the purposes of that Regulation.

2. A public sector body claiming that the application by it of the accessibility requirements set out in Regulation 4 would impose on it a disproportionate burden in accordance with paragraph (1) shall carry out an assessment of the extent to which compliance with those accessibility requirements would impose on it such a burden.

3. In carrying out the assessment referred to in paragraph (2), the public sector body concerned shall take into account the relevant circumstances, including the following:

a. the size, resources and nature of the public sector body concerned;

b. the estimated costs and benefits for the public sector body concerned in relation to the estimated benefits for persons with disabilities, taking into account the frequency and duration of use of the websites or mobile applications concerned;

4. Where, having conducted the assessment referred in paragraph (2), a public sector body avails of the derogation provided for in paragraph (1) in respect of a specific website or mobile application, the public sector body shall explain, in the accessibility statement referred to in Regulation 7, the part of the accessibility requirements set out in Regulation 4 that could not be complied with in respect of that website or mobile application and shall, where appropriate, provide accessible alternatives.

The public body would have to provide objectively justifiable information supporting their 'inability to make the website/mobile application accessible. This information would have to include material on the size and nature of the public sector body and the resources available to it, together with the estimated costs and benefits associated with making the resource available.

12. How is this regulation monitored, who is it monitored by and what are the methods for complaints and redress for those affected?

The Accessibility statement of the public body must provide contact details to allow a member of the public to make a complaint about the accessibility of the website/mobile app. The Accessibility statement must also have a link to the complaint and redress facility in either the Equal Status Act or the Disability Act [or both] depending on the status of the public body.

Complaints under the Disability Act are heard by the Office of the Ombudsman, complaints under the Equal Status Acts are made to the Workplace Relations Commission [WRC].

13. Does the regulation contain anything about how institutions or indeed nations should go about meeting the requirements e.g. does it place a requirement for staff training or similar on organisations or a requirement on governments to make training available?

Article 7 of the Accessibility Directive provides that:

4. Member States shall promote and facilitate training programmes, relating to the accessibility of websites and mobile applications for relevant stakeholders and staff of public sector bodies, designed to train them how to create, manage and update the accessible content of websites and mobile applications.

5. Member States shall take the necessary measures to raise awareness of the accessibility requirements set out in Article 4, of their benefits to users and to owners of websites and mobile applications, and of the possibility of giving feedback in the case of any failure to comply with the requirements of this Directive, as set out in this Article.



6. For the purposes of the monitoring and reporting referred to in Article 8, the Commission shall facilitate cooperation at Union level between Member States, and between Member States and relevant stakeholders, with a view to the exchange of best practices between them and to reviewing the monitoring methodology referred to in Article 8(2), market and technological developments and progress in accessibility for websites and mobile applications

The Web Accessibility Directive

AHEAD

East Hall

UCD Carysfort Avenue

Blackrock

Co. Dublin

TEL. +353 (0)1 716 8844

EMAIL. ahead@ahead.ie

WEB. www.ahead.ie

FACEBOOK. facebook.com/ahead.ie

TWITTER. [@aheadireland](https://twitter.com/aheadireland)

Katie Ridge B.L.

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Creating inclusive environments in education
and employment for people with disabilities