EXPLANATORY MEMORANDUM TO

THE PUBLIC SECTOR BODIES (WEBSITES AND MOBILE APPLICATIONS) ACCESSIBILITY (AMENDMENT) (EU EXIT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 (S.I. 2018/952) ("the 2018 Regulations") to remedy deficiencies in the 2018 Regulations now that the United Kingdom is no longer part of the European Union.

2.2 The 2018 Regulations refer to European Commission implementing acts and contain requirements to report to the Commission. This instrument replaces these implementing acts with UK implementations to ensure continued operation of the Regulations and establishes a UK reporting regime.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument amends instruments made under section 2(2) of the European Communities Act 1972. The procedural requirements under Paragraph 15 of Schedule 8 to the European Union (Withdrawal) Act 2018 have been complied with.

3.2 Although the instrument is not required by paragraph 1(1) of Schedule 7 of the European Union (Withdrawal) Act 2018 to be laid in draft before Parliament, and approved by a resolution of each House before being made, the Minister considers that the procedure is appropriate. That is because, although, as set out below, the underlying policy is subject to only minor changes to ensure that the digital accessibility regime remains operable by the UK, in doing so there is a transfer of control by the EU legislature to UK executive control and Parliament may wish to satisfy itself that no necessary protections are being lost.

3.3 This instrument provides for the draft regulations to come into force on the day after the day on which they are made. Whilst the instrument involves a change in procedure requiring different patterns of behaviour the new duties are not more onerous than the previous position and the duty being changed relates to the publication of a report, for which the next applicable date is 2024. The only body affected by this change is the Minister for the Cabinet Office and sufficient time has been allowed for adaptation to the changes required and accordingly it is not believed a delayed commencement date is required.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister Heather Wheeler has made the following statement regarding Human Rights:

"In my view the provisions of the Public Sector Bodies (Websites and Mobile Applications) Accessibility (Amendment) (EU Exit) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2018 Regulations were transposed into UK law in 2018 from the 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 ("the Directive").

6.2 Where possible the original transposition maintained existing UK equality requirements and made only the necessary changes to existing UK law.

6.3 The 2018 Regulations contain requirements to report to the European Commission and refer to harmonised standards, technical specifications, a model accessibility statement and monitoring methodologies that are established in implementing acts adopted by the Commission. Since the UK has left the EU, it is no longer appropriate to report to the Commission. The UK no longer adopts new implementing acts so changes to these acts no longer take effect in the UK. There is also no mechanism for the UK to change the prescribed implementing acts.

6.4 These Regulations are made under section 8 of the European Union (Withdrawal) Act 2018 which allows a Minister to make regulations to resolve any deficiencies in law that arise as a result of the UK's departure from the European Union.

6.5 This instrument removes the links to the Commission's implementing acts and replaces them with UK-set implementations.

7. Policy background

What is being done and why?

7.1 The Directive was designed to allow citizens, particularly those with a disability, to gain better access to public services by making public sector bodies' websites and mobile applications more accessible. "Accessibility" refers to principles and techniques to follow when designing, building, maintaining and updating websites and applications, in order to make them easy for people to use, especially people with disabilities.

7.2 The policy objectives of the Directive align strongly with existing UK policy. The UK has a longstanding commitment to ensure equality of access to government information and services for the approximately 13.9 million disabled people in the UK. The UK has a robust existing equality regime under the Equality Act 2010 in Great Britain and the Disability Discrimination Act 1995 in Northern Ireland. The

National Disability Strategy, published in July 2021, reinforces the UK Government's commitment to improve the everyday lives of all disabled people.

7.3 The technical standard in the 2018 Regulations is ETSI EN 301 549, which is a European harmonised standard for ICT accessibility. Development of the standard is driven by the European Commission. The version of the standard is updated through Implementing Decisions which are no longer adopted in the UK. This instrument moves the technical standard to the Web Content Accessibility Guidelines, the international accessibility standard developed by the World Wide Web Consortium.

7.4 The model accessibility statement used by UK public sector organisations is currently set by the European Commission. This will now be set by the UK Government.

7.5 The 2018 Regulations include a monitoring methodology harmonised across the European Union. The harmonisation is no longer appropriate and the monitoring methodology will be set by the UK Government.

7.6 The 2018 Regulations require the Minister for Cabinet Office to submit a report to the European Commission on the outcome of accessibility monitoring. As the UK is no longer part of the EU, the submission will be replaced with a publication requirement for continued transparency and accountability.

7.7 Consequently this instrument ensures the legislation remains operable and technical standards and process can be updated by the UK Government when necessary.

7.8 This instrument revokes 3 Commission Implementing Decisions that are no longer required given the other changes made by this instrument. These are Commission Implementing Decision (EU) 2018/1523 of 11 October 2018 that sets a model accessibility statement, Commission Implementing Decision (EU) 2018/1524 of 11 October 2018 that details a monitoring methodology and Commission Implementing Decision (EU) 2018/2048 of 20 December 2018 that sets the technical standard for accessibility.

Explanations

What did any law do before the changes to be made by this instrument?

7.9 The 2018 Regulations require public sector organisations to make their websites and mobile apps accessible to a technical standard (ETSI EN 301 549), and for an accessibility statement to be published containing contact information for the organisation and information about the website or app's accessibility. The model accessibility statement is set in Commission Implementing Decision (EU) 2018/1523 of 11 October 2018.

7.10 The 2018 Regulations require the Minister for Cabinet Office to monitor the compliance of public sector websites and mobile apps using a monitoring methodology set in Commission Implementing Decision (EU) 2018/1524 of 11 October 2018.

7.11 The Minister for Cabinet Office is required to submit a report to the European Commission on the outcome of the monitoring by 23rd December 2021, and every three years thereafter.

7.12 The accessibility regulation is enforced by the Equality and Human Rights Commission in Great Britain and the Equality Commission for Northern Ireland in Northern Ireland.

7.13 The accessibility statement regulation is enforced by the Cabinet Office and the Regulations allow the Minister for Cabinet Office to determine compliance. The Minister for Cabinet Office will publish a list of determinations made.

Why is it being changed?

7.14 The technical standard, model accessibility statement and monitoring methodology are set by the European Commission. Since the UK has left the EU this is no longer appropriate. The UK is no longer subject to new Implementing Decisions and therefore does not receive updates or changes to these, but currently does not have a way to change these in the UK.

7.15 The technical standard is being changed to an international standard that is more widely used and known by accessibility specialists and developers. The UK Government can influence updates to the standard as a member of the World Wide Web Commission.

What will it now do?

7.16 The Regulations that apply to public sector organisations will substantially remain the same. The technical standard is changed but the current European standard is based on the International standard that is being adopted. There is still a requirement to publish an accessibility statement.

7.17 The Implementing Decisions which underpinned the Commission's model accessibility statement, the monitoring methodology and the standards, and which are retained EU law, are revoked.

7.18 The model accessibility statement and monitoring methodology will instead be set by the UK Government and published.

7.19 The Minister for Cabinet Office will no longer be required to send a report to the European Commission every three years. Instead the Minister for Cabinet Office will be required to publish a report for transparency and accountability no later than 23rd December 2024 and every three years thereafter. An initial report was published in December 2021 by the Minister for the Cabinet Office. It was not sent to the Commission as the UK is no longer part of the European Union.

7.20 Enforcement methods of the Regulations do not change.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans to consolidate the Regulations at this time.

10. Consultation outcome

10.1 No formal consultation has been undertaken given the minor and technical nature of the amendments. A public consultation was undertaken before the 2018 Regulations were transposed between 30 April 2018 and 29 May 2018.

11. Guidance

11.1 The model accessibility statement and monitoring methodology are published at https://www.gov.uk/guidance/public-sector-website-and-mobile-application-accessibility-monitoring.

11.2 Details of the technical standard will be updated on the webpage above once this Instrument is made.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument the SI relates to maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is, because the instrument makes no substantive changes to the obligations of public sector organisations or the monitoring and enforcing regime, to assess the changes made in the course of normal departmental business.

14.2 As this instrument is made under the European Union (Withdrawal) Act, no review clause is required.

15. Contact

15.1 Chris Heathcote at the Central Digital and Data Office can be contacted with any queries regarding the instrument.

15.2 Email: team-accessibility-regulations@digital.cabinet-office.gov.uk

15.3 Dan Bailey, Chief Technology Officer at the Central Digital and Data Office can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Parliamentary Secretary, Cabinet Office, Heather Wheeler can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Appropriateness statement

1.1 Parliamentary Secretary, Cabinet Office, Heather Wheeler has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Public Sector Bodies (Websites and Mobile Applications) Accessibility (Amendment) (EU Exit) Regulations 2022 does no more than is appropriate".

1.2 This is the case because the changes made in the instrument are the minimum required to remove the requirement to report to the Commission and for the UK Government to set the technical standard, model accessibility statement and monitoring methodology. Practically the amendments do not change the substance of the accessibility requirements for public sector organisations, or the responsibilities of the Minister for Cabinet Office.

2. Good reasons

2.1 Parliamentary Secretary, Cabinet Office, Heather Wheeler has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are: to ensure continued operation of the Regulations and allow the UK Government to keep the accessibility standard, model accessibility statement and monitoring methodology up-to-date, and to replace a requirement to submit a monitoring report to the Commission, as the UK is no longer part of the European Union.

3. Equalities

3.1 Parliamentary Secretary, Cabinet Office, Heather Wheeler has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 Parliamentary Secretary, Cabinet Office, Heather Wheeler has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.