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Accessibility and the Limits of the Equality Act 2010: Time for a UK Accessibility Act?

Anna Lawson [*]

Abstract This article makes a case for the introduction of a new UK Accessibility Act to supplement existing equality law and outlines key ingredients to be included in such legislation. Such a reform would fulfil commitments under international human rights law, align with purported cross-government prioritization of accessibility, establish a more joined-up and effective regulatory structure and, most importantly, hasten progress toward a barrier-free society in which disabled people and others are enabled to learn, work, move and live as equals. The article has three main sections. The first elaborates on the accessibility obligations set out in the UN Convention on the Rights of Persons with Disabilities. It also discusses recent legislative responses to these international human rights requirements in the European Union (the European Accessibility Act) and Canada (the Accessible Canada Act). The second section maps out the various accessibility interventions of the Equality Act 2010 and exposes the limits of the current approach, which is patchy, splintered and heavily dependent on expensive and high-risk litigation by individuals. The third section draws on the examples of Canadian and EU legislation to consider what should be included in a new UK Accessibility Act.

Key words: accessibility; discrimination; access to justice; Equality Act 2010; Disability Discrimination Act 1995; UN Convention on the Rights of Persons with Disabilities; Accessible Canada Act; European Accessibility Act

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1. *Introduction*

Accessibility is a key cross-cutting obligation imposed on states parties, including the UK,[1] by the UN Convention on the Rights of Persons with Disabilities (CRPD).[2] This is because, as stated in the preamble of that treaty, accessibility has a vital role to play 'in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms'[3] and is an essential 'prerequisite for [the] equal participation of persons with disabilities in mainstream society'.[4] State measures to require, enhance and promote accessibility are necessary, according to Article 9 of the CRPD, 'To enable persons with disabilities to live independently and participate fully in all aspects of life'.[5]

Since its entry into force in 2008, the CRPD has inspired and strengthened efforts to enhance accessibility regulation around the globe. In the UK there have been a number of positive developments in the past 15 years, particularly in relation to sign language[6] and the accessibility of the websites of public bodies.[7] The overall regulatory framework, however, remains substantially the same as that introduced by the Disability Discrimination Act 1995 (DDA) and subsequently (for England, Scotland and Wales) carried forward into the Equality Act 2010 (EqA). The fact that the EqA (and DDA in Northern Ireland) are still expected to do much of the heavy lifting in regulating and enhancing accessibility is evident from the prominence given to them in the UK government's report on its implementation of the CRPD to the UN Committee on the Rights of Persons with Disabilities (CRPD Committee).[8]

[1] The UK ratified the CRPD on 8 June 2009 and its Optional Protocol on 7 August 2009. See generally Anna Lawson and Lucy Series, 'The United Kingdom' in Lisa Waddington and Anna Lawson (eds), *The UN Convention on the Rights of Persons with Disabilities in Practice: A Comparative Analysis of the Role of Courts* (OUP, 2018).

[2] 2515 UNTS 3 (CRPD).

[3] CRPD, preamble para v.

[4] Rehabilitation International, UN Convention on the Human Rights of People with Disabilities: Ad Hoc Committee—Daily Summaries' (6th session), South Africa speaking on behalf of the Africa Group—available at <http://www.un.org/esa/socdev/enable/rights/ahc6summary.htm> entry for 9 August 2005, on the structure of the convention. See generally Andrea Broderick, 'Of Rights and Obligations: The Birth of Accessibility' (2020) 24(4) *International Journal of Human Rights* 3.

[5] CRPD, Art 9(1).

[6] British Sign Language Act 2022.

[7] See Section 3.3.2.

[8] See eg United Kingdom Initial State Report on the United Nations Convention on the Rights of Persons with Disabilities, 24 November 2011, Paras 90, 93.

Despite the fact that it is now 30 years since the DDA was enacted, progress in tackling the systemic disadvantage associated with lack of accessibility remains slow. Thus, the Equality and Human Rights Commission (EHRC) concluded in 2017 that disabled people experienced significant barriers to accessing services and public functions,[9] a situation worsened by the Coronavirus crisis.[10] Furthermore, in the survey informing the National Disability Strategy 2021, 47% of disabled participants reported 'having at least "some difficulty" getting in and out of where they live'.[11] Nevertheless, government commitments to enhancing accessibility in the context of new housing and communal parts of let premises appear to have stalled,[12] as do similar commitments to strengthening accessibility requirements for the websites of private sector organizations.[13] In relation to transport, a report of the House of Commons Transport Committee in 2025 noted that almost 90% of respondents to its survey stated that they encountered access barriers making travel difficult for them, often, most of the time, or always.[14] Besides slow progress in tackling long-standing accessibility barriers, new forms of accessibility barriers are emerging, such as the increasing use of touch-screen portable card-readers (or self-service terminals) by service providers unable to offer any accessibility solutions to enable blind and partially-sighted people to use them;[15] and accessibility barriers associated with crossing newly installed cycle lane infrastructure to access bus stops and other facilities.[16]

The role of equality legislation in regulating and enhancing accessibility has been the focus of surprisingly little attention in the UK, and indeed elsewhere. Such UK studies have tended to focus on the

[9] EHRC, *Being Disabled in Britain: A Journey Less Equal*, 3 April 2017, especially ch 8.2.

[10] House of Commons Women and Equalities Committee, *Unequal Impact? Coronavirus, Disability and Access to Services*, 22 December 2020, HC1050.

[11] Cabinet Office, Disability Unit, 'National Disability Strategy' Command Paper 512 (2021, updated December 2022), 35.

[12] See eg ibid, 35–39.

[13] Ibid, 76.

[14] House of Commons Transport Committee, *Access Denied: Rights versus Reality in Disabled People's Access to Transport* (2025), para 20.

[15] See eg BBC Radio 4, 'In Touch', 11 February 2025, available at <https://www.bbc.co.uk/programmes/m0027ts0#:~:text=We%20probe%20ongoing%20accessibility%20problems,raising%20hopes%20of%20a%20solution.&text=the%20right>, accessed 30 March 2025.

[16] See eg University College London, *Designing for Inclusion* (Guide Dogs for the Blind Association, 2024).

accessibility-related implications of particular cases[17] or specific aspects of the EqA (such as the anticipatory reasonable adjustment duty[18] and the Public Sector Equality Duty (PSED)).[19] Furthermore, although accessibility has been fundamental to a number of enquiries carried out by parliamentary committees, these have focussed either on accessibility problems in specific contexts (such as the built environment[20] or transport[21]) or on broader questions (such as the overall operation and effectiveness of the EqA for disabled people[22]) encompassing many concerns of which accessibility is only one. Unsurprisingly, therefore, reflection about reform has tended to focus on change within specific sectors and within the parameters of the EqA itself.

The aim of this article is to energize debate about accessibility regulation in the UK and to shift the focus of that debate away from piecemeal reform of the EqA toward more cohesive and systemic approaches to change involving the introduction of new accessibility legislation. To be firmly grounded, this debate demands clarity about how the EqA currently regulates accessibility. Given its complexity and fragmentation, and the tendency of previous work to focus only on one aspect of it at a time, a broad mapping exercise of EqA accessibility regulation is called for. It is also important to ensure that the debate is informed by relevant international human rights commitments made by the UK through its ratification of the CRPD. Recent legislative initiatives on accessibility in other jurisdictions, particularly Canada and the European Union (EU), provide helpful examples that enrich and inform the analysis.

The discussion that follows will be divided into three main sections. The first of these, Section 2, provides international and normative

[17] See eg Abigail Pearson, "The Debate about Wheelchair Spaces on Buses goes 'Round and Round': Access to Public Transport for People with Disabilities as a Human Right" (2018) 69 (1) *Northern Ireland Legal Quarterly* 1; and Stephen Bunbury, 'An Analysis of the Service Provider's Legal Duty to Make Reasonable Adjustments: The Little Mix Saga' (2020) 18(2) *Entertainment and Sports Law Journal* 1.

[18] See eg, Abigail Pearson, 'What's Worth got to do with it? Language and the Socio-Legal Advancement of Disability Rights and Equality' (2014) 20(3) *Web Journal of Current Legal Issues*; and Anna Lawson and Maria Orchard, 'The Anticipatory Reasonable Adjustment Duty: Removing the Blockages?' (2021) 80 *CLJ* 308.

[19] See eg Charlotte Pearson et al, 'Don't get Involved: An Examination of how Public Sector Organizations in England are Involving Disabled People in the Disability Equality Duty' (2011) 26(3) *Disability & Society* 255; and Anna Lawson et al, 'Enhancing the Accessibility of Pedestrian Environments: Critical Reflections on the Role of the Public Sector Equality Duty', (2024) 13(4) *Laws* (article 43) 1.

[20] House of Commons Women and Equalities Committee, *Building for Equality: Disability and the Built Environment*, 25 April 2017, HC 631.

[21] House of Commons Transport Committee, n 14.

[22] House of Lords Select Committee on the Equality Act 2010 and Disability, *The Equality Act 2010: The Impact on Disabled People*, 24 March 2016, HL 117.

context for the subsequent analysis. It highlights the accessibility obligations imposed by the CRPD and outlines key aspects of relevant accessibility legislation in Canada and the EU. Section 3 maps out and critiques current EqA approaches to accessibility regulation in England, Scotland and Wales. The provisions of the DDA in Northern Ireland do not differ significantly from those of the EqA and much of the analysis here will therefore also be applicable to Northern Ireland. In order to avoid introducing an additional layer of complexity into what is already an extremely complicated field; however, specific reference will not be made to the Northern Ireland context. Section 4 is forward-looking. It draws on the CRPD and developments in other jurisdictions, as well as the EqA, to outline possible ways forward. In particular, it reflects on what might be included in a UK Accessibility Act.

2. *International Context*

2.1 *Accessibility in the UN Convention on the Rights of Persons with Disabilities*

2.1.1 *Meaning of Accessibility in the Convention*

'Accessibility' is not explicitly defined in the CRPD. Nevertheless, it is clear from the framing of Article 9 that it is rooted in disability equality. That provision, for example, requires measures to enhance accessibility for 'persons with disabilities', ensuring that they are granted 'access, on an equal basis to others', so that they have opportunities to 'live independently and participate fully in all aspects of life'.[23] This disability focus, however, does not mean that the inclusionary impact of accessibility measures is confined to disabled people.[24] Enhancing accessibility is also likely to reduce barriers frequently experienced by others—particularly older people, young children, parents using buggies and pushchairs, and people who have temporary injuries or illnesses. Regard to the potential for wider inclusionary impact is thus important in planning for accessibility[25]—and consistent with the CRPD's universal design commitments.[26]

[23] CRPD, Article 9(1).

[24] See eg Olav Rand Bringa, 'Universal Design as a Technical Norm and Juridical Term - A Factor of Development or Recession?' (2018) 256 *Studies in Health Technology and Informatics* 33.

[25] Ibid, 34.

[26] CRPD Article 4(1)(f). See also CRPD Committee, *General Comment No 4. Article 24: Right to Inclusive Education* CRPD/C/GC/4 (2 September 2016), para 21.

2.1.2 *Accessibility Obligations in the Convention*

Accessibility obligations cut across the entirety of the Convention, as highlighted by the fact that a search for 'accessible' in its text (and that of its Optional Protocol) yields some 26 results. Accessibility features in Article 3, as one of the CRPD's 'general principles'.[27] It is also the subject matter of Article 9.

The accessibility obligations of Article 9 extend to 'the physical environment', 'transportation', 'information and communications, including information and communications technologies and systems' and 'facilities and services open or provided to the public'.[28] Thus, although it is governments that ratify human rights treaties, Article 9 explicitly requires them to regulate accessibility in private sector services and facilities.[29] The significance of this was highlighted by the CRPD Committee's early decision in *Nyusti and Takács v Hungary*,[30] which found Hungary in breach of Article 9 because it had taken insufficient measures to ensure that the services of a private bank were accessible to blind customers.

As to the types of measure required by Article 9, its first paragraph requires States Parties to implement measures for 'the identification and elimination of obstacles and barriers to accessibility'.[31] Examples of other specific types of accessibility-related measures are set out in Article 9(2). These include the development and promulgation of 'minimum standards and guidelines for the accessibility of facilities and services open or provided to the public', together with systems for monitoring their implementation;[32] the provision of accessibility training for stakeholders;[33] the provision of accessible signage (including in Braille and Easy Read) and live assistance (such as guides and sign language interpreters) in buildings and facilities open to the public;[34] and the promotion of access to new forms of information and communication

[27] CRPD, Article 3(f).
[28] CRPD, Article 9(1).
[29] CRPD, Article 9(2)(b).
[30] *Nyusti and Takács v Hungary,* UN Doc CRPD/C/9/D/1/2010 (21 June 2013). See generally Oliver Lewis, 'Nyusti and Takacs v Hungary: Decision of the UN Committee on the Rights of Persons with Disabilities' (2013) 4 *European Human Rights Law Review* 419; and Anna Lawson, 'Accessibility Obligations in the UN Convention on the Rights of Persons with Disabilities' (2014) 30 (2) *South African Journal on Human Rights* 380.
[31] CRPD, Article 9(1).
[32] CRPD, Article 9(2)(a).
[33] CRPD, Article 9(2)(c).
[34] CRPD, Article 9(2)(d) and (e).

technology (ICT) and systems to disabled people, as well as the design and distribution of accessible ICT.[35]

2.1.3 *Guidance on Implementation of the Convention's Accessibility Obligations*

Implementation guidance, going beyond the text of Article 9, is provided by the CRPD Committee—to specific States in its concluding observations and views on complaints, and more broadly in its general comments, particularly its General Comment No. 2.[36] Foundational to this general guidance is the distinction between 'the obligation to ensure access to all newly designed, built or produced objects, infrastructure, goods, products and services' on the one hand, and 'the obligation to remove barriers and ensure access to the existing physical environment and existing transportation, information and communication, and services open to the general public'[37] on the other. The significance of this distinction is that the former (newly created or introduced environments, products, services or facilities) must be accessible from the outset. The latter (environments, products, facilities, services etc already in existence), by contrast, are permitted a period of time in which to be made accessible—the requirement being that progress is made 'gradually in a systematic and, more importantly, continuously monitored manner, with the aim of achieving full accessibility.'[38]

This process of gradual progress toward accessibility requires that States Parties establish 'definite time frames' and allocate 'adequate resources for the removal of existing barriers'.[39] They must also carry out 'within a short- to mid-term framework',[40] an 'analysis of the situation to identify the obstacles and barriers that need to be removed'.[41] Thus, according to General Comment No. 2:

> States Parties should adopt action plans and strategies to identify existing barriers to accessibility, set time frames with specific deadlines and provide both the human and material resources necessary to remove the

[35] CRPD, Article 9(2)(g) and (h).
[36] CRPD Committee, *General Comment No 2. Article 9: Accessibility*, UN Doc CRPD/C/GC/2 (11 April 2014).
[37] Ibid, para 24.
[38] Ibid, para 14.
[39] Ibid, para 24.
[40] Ibid, para 27.
[41] Ibid.

> barriers. Once adopted, such action plans and strategies should be strictly implemented.[42]

These action plans and strategies should, according to the Committee, specify the accessibility-related obligations 'of the different authorities (including regional and local authorities) and entities', as well as setting out 'effective monitoring mechanisms to ensure accessibility and monitor sanctions against anyone who fails to implement accessibility standards'.[43]

The Committee expands on its advice relating to the monitoring of accessibility as follows:

> States Parties are under an obligation to develop an effective monitoring framework and set up efficient monitoring bodies with adequate capacity and appropriate mandates to make sure that plans, strategies and standardization are implemented and enforced.[44]

It also advises that States should ensure their accessibility monitoring mechanisms are sufficiently strong 'to ensure accessibility and that resources are made available to remove barriers to accessibility and train monitoring staff' and invest in 'continuous capacity-building' of authorities responsible for monitoring implementation of accessibility standards.[45]

General Comment No. 2 stresses that effective legislation and regulation are key to the implementation of Article 9. It urges that:

> States Parties should undertake a comprehensive review of the laws on accessibility in order to identify, monitor and address gaps in legislation and implementation.[46]

Embedding accessibility into legislation, according to the Committee, requires it to be both mainstreamed into laws dealing with issues such as 'construction and planning', 'public aerial, railway, road and water transport' and 'information and communication';[47] and to be made the subject of 'laws on equal opportunities, equality and participation in the context of the prohibition of disability-based discrimination'.[48]

[42] Ibid, para 33.
[43] Ibid, para 24.
[44] Ibid, para 33.
[45] Ibid, para 33.
[46] Ibid, para 28.
[47] Ibid, para 29.
[48] Ibid.

Another key aspect of the Committee's guidance on the implementation of Article 9 is its emphasis on the need to involve disabled people and other relevant stakeholders in the process. It noted that:

> It is important that the review and adoption of these laws and regulations [is] carried out in close consultation with persons with disabilities and their representative organizations [Article 4(3)], as well as all other relevant stakeholders, including members of the academic community and expert associations of architects, urban planners, engineers and designers.[49]

It also stressed that the mechanism responsible for monitoring the implementation of the CRPD in the country concerned must be given opportunities to 'take part in the drafting of national accessibility standards, comment on existing and draft legislation, submit proposals for draft legislation and policy regulation, and participate fully in awareness-raising and educational campaigns'.[50]

2.2 *Recent Accessibility-Specific Legislation in Other Jurisdictions*

Amongst the most interesting and helpful examples of recent legislative initiatives to address accessibility are the European Accessibility Act 2019 (EAA)[51] and the Accessible Canada Act 2019 (ACA).[52] Both were, at least in part, responses to the accessibility requirements of the CRPD[53] and, prior to their enactment, the CRPD Committee was encouraging of both—recognizing the potential significance of the emerging EAA some 4 years before it was adopted[54] and, in its concluding observations on Canada in 2017, stressing the importance of addressing accessibility in proposals for federal disability legislation.[55] Both Acts are striking examples of major initiatives to address accessibility regulation head-on, as a policy field distinct from (albeit closely allied to) that of non-discrimination.[56]

[49] Ibid, para 28.
[50] Ibid, para 48.
[51] Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, OJ 2019 L 151/70.
[52] SC 2019, c 10 CanLII. See generally Laverne Jacobs et al, 'The Annotated Accessible Canada Act' [2021] *Windsor Yearbook of Access to Justice* 1.
[53] See eg European Accessibility Act, n 51, recitals (12)-(16); and Accessible Canada Act, ibid, preamble, fourth paragraph.
[54] CRPD Committee, *Concluding Observations on the Initial Report of the EU*, CRPD/C/EU/CO/1 (4 September 2015) paras 28 and 29.
[55] CRPD Committee, *Concluding Observations on the Initial Report of Canada*, CRPD/C/Can/CO/1 (8 May 2017) para 21.
[56] For Canada, set out eg in the federal Canadian Human Rights Act (RSC 1985, c. H-6); and Canadian Charter of Rights and Freedoms (Part 1 of the Constitution Act 1982); and, for the EU, set out eg in Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation, [2000] OJ L303/16.

2.2.1 *Accessible Canada Act*

In Canada, the ACA plays a foundational role in the field of federal accessibility law and policy. Its aim is 'to benefit all persons, especially persons with disabilities, through the realization … of a Canada without barriers, on or before 1 January 2040, particularly by the identification and removal of barriers, and the prevention of new barriers'.[57] It lays down seven principles to guide implementation, including involving 'persons with disabilities … in the development and design' of relevant law, policy and practice[58]; and ensuring that 'the objective of achieving the highest level of accessibility for persons with disabilities' underpins the development of accessibility standards and regulations.[59]

As a federal law, the ACA imposes obligations only on federal entities.[60] At the provincial level, however, there is a powerful momentum toward the enactment of similar legislation—writing in 2024, Beaudry observed that 'half of the provinces and territories have passed accessibility legislation, while others are following on their heels'.[61] The scope of the Act is extensive, covering the built environment, transportation, communication and ICT, employment, procurement and the design and delivery of programmes and services, with the possibility of adding other issues through regulation-making powers.[62] Significantly, however, exemptions from the general machinery of the Act grant regulatory authority instead to industry-specific regulators in fields of transport, telecommunications and broadcasting—a fact which has been said to result in 'a patchwork approach' to the Act's implementation.[63]

The ACA establishes a number of posts and structures which together constitute the architecture of accessibility regulation. A Minister for Accessibility is granted wide-ranging powers relating to relevant policy, research, awareness-raising and collaboration,[64] and overall responsibility for making Canada accessible by 2040.[65] This entails the Minister working closely with the Cabinet on making accessibility standards binding, by adopting them as regulations.[66] The Chief Accessibility

[57] ACA, s 5
[58] ACA, s 6(1)(f).
[59] ACA, s 6(1)(g).
[60] ACA, s 7.
[61] Jonas-Sébastien Beaudry, 'Ableism's New Clothes: Achievements and Challenges for Disability Rights in Canada' (2024) 74(1) *University of Toronto Law Journal* 1, 2.
[62] ACA, s 5.
[63] Jacobs et al, n 52, 7.
[64] See eg ACA, s 11-16.
[65] ACA, s 11.
[66] Power to issue such regulations is granted to the Cabinet (or the Governor in Council) by s 117(1) of the ACA.

Officer is a special adviser to the Minister, with responsibility for reporting on progress and systemic and emerging challenges.[67] The Act also requires an accessibility standards body to be established (Accessibility Standards Canada), overseen by a Board made up of a majority of disabled people, with a remit to develop accessibility standards and advise the Minister of any that should be adopted through regulations. It is also required to report to the Minister on progress, to support or conduct relevant research and to share best practices in the identification and removal of accessibility barriers.[68] The ACA also makes provision for an Accessibility Commissioner to be appointed by, and sit within, the Canadian Human Rights Commission. This Commissioner is responsible for the majority of ACA enforcement, with a range of tools at their disposal, including inspections, production orders, compliance orders and agreements, notices of violation and significant financial penalties.[69]

Key obligations imposed by the ACA on federal entities can be divided into three main categories: First, such entities are required to compile regular accessibility plans and progress reports, in line with guidance in ACA regulations. These must address how the entities will identify, remove and prevent accessibility barriers. Disabled people must be involved in the preparation of these plans.[70] Second, regulated entities must set up effective mechanisms for receiving and dealing with feedback about the implementation of their accessibility plans, and about any accessibility barriers experienced by people interacting with them. Information about these mechanisms is to be included in progress reports.[71] Third, organizations falling within the scope of the ACA must comply with accessibility regulations issued under the Act.[72]

The ACA grants a right to individuals (subject to a number of exceptions, eg where other causes of action are available[73]) to bring complaints to the Accessibility Commissioner if the breach of an accessibility regulation (issued under Section 117 of the Act) has adversely affected them, for example by causing them physical, emotional or financial harm.[74] The potential impact of this complaints mechanism thus depends, to

[67] ACA, s 111-116.
[68] ACA, s 17-36.
[69] ACA, s 73-93.
[70] ACA, s 47–49, 56–58, 65–67 and 69–71.
[71] See especially ACA, s 43, 44(5) and 45(1)(b.1) and (c); 48 and 49(5); 52, 53(3)-(5) and 54(1)(b)-54(1)-(c); 57, 58(5); 61, 62(5) and 63(1)(b.1) and (c); 66(5); and 70 and 71(5).
[72] A range of regulation-making powers are granted, including in s 117(1).
[73] ACA, s 94(2),(3) and (4).
[74] ACA, s 94(1).

some extent, on the number, nature and extent of ACA regulations. If, on investigation, the Accessibility Commissioner finds that there has been a violation, potential remedies include ordering the federal entity to take appropriate corrective action or ordering them to pay the claimant compensation up to a specified ceiling.[75]

2.2.2 *European Accessibility Act*

In the EU, the EAA (which entered into force in June 2025) is a very significant addition to an already well-established body of EU accessibility-related law and policy.[76] Its aim, as well as enhancing accessibility, is

> to contribute to the proper functioning of the internal market by approximating the laws, regulations and administrative provisions of the Member States as regards accessibility requirements for certain products and services by, in particular, eliminating and preventing barriers to the free movement of products and services … arising from divergent accessibility requirements in the Member States.[77]

While this purpose is narrower than that of the ACA, the EAA strengthens the cohesion and extends the coverage of broader EU accessibility law and policy by building on and harnessing earlier accessibility developments, particularly accessibility-related technical standards.[78] It supplements pre-existing accessibility requirements in contexts such as procurement,[79] transport[80] and website and digital communications.[81]

[75] ACA, s 102.

[76] See eg the accessibility sections of Commission Communication of 15 November 2010, *European Disability Strategy 2010–2020: A Renewed Commitment to a Barrier-Free Europe*, COM (2010) 636 final; Communication from the Commission, *Union of Equality: strategy for the Rights of Persons with Disabilities 2021-2030* COM(2021) 101 final; and European Commission Staff Working Document, *Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities by the EU* SWD (2023) 95 Final. See also, Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases and Materials* (CUP, 2019) ch 12.

[77] EAA, Art 1.

[78] See, on the accessibility-related dimension of this policy sphere, David L Hosking, 'Promoting Accessibility for Disabled People Using EU Standardization Policy' (2017) 42(2) *European Law Review* 145; and Broderick and Ferri, n 76, ch 12.6.

[79] EAA, Art 24 and recitals (90)-(92) and (97). See also Broderick and Ferri, n 76, ch 12.5; and Rosemary Boyle, 'Disability Issues in Public Procurement', in Sue Arrowsmith and Peter Kunzlik (eds), *Social and Environmental Policies in EC Procurement Law: New Directives and New Directions* (CUP, 2009), 310.

[80] See eg EAA, Article 5 and recitals (34)–(36). See generally Broderick and Ferri, n 76, ch 12.3.2.

[81] See eg EAA, recitals (46) (47).

The EAA does not itself set out detailed technical standards, instead requiring 'functional accessibility', formulated as 'general objectives' which leave 'a certain degree of flexibility in order to allow for innovation'[82] and a presumption of conformity for products and services consistent with technical standards issued by EU standard-setting organizations.[83] It urges that:

> Accessibility should be achieved by the systematic removal and prevention of barriers, preferably through a universal design or 'design for all' approach, which contributes to ensuring access for persons with disabilities on an equal basis with others.[84]

Consistent with its aim of harmonizing accessibility standards, it applies only to products and services which were (or which, in the absence of EU intervention, were likely in the future to be) affected by divergent national accessibility standards.[85]

Its focus is a range of largely digital products (including computer hardware and operating systems; self-service terminals such as payment terminals, automated teller machines, transport ticket and check-in machines; e-readers and e-books; equipment associated with digital television services and smartphones) and transport, banking, e-commerce, electronic communication services and services providing access to audiovisual media.[86] In relation to products and services within its scope, the EAA requires Member States to impose obligations on various types of economic operators, private as well as public,[87] including manufacturers,[88] distributors[89] and service-providers[90] (with an exception for micro-enterprises[91]). Such operators must ensure that subject to considerations of disproportionate burden and fundamental alteration of the product or service,[92] only products and services that conform with the Directive are offered.[93] Manufacturers are responsible

[82] EAA, recital (23).
[83] EAA, Article 15 and recital (74)–(76).
[84] EAA, recital (55).
[85] EAA, recital (18). For an example of relevant background research on this issue, see eg Mark Priestley, *National Accessibility Requirements and Standards for Products and Services in the European Single Market: Overview and Examples* (compiled on behalf of ANED) (2013), available at http://www.disability-europe.net/theme/accessibility.
[86] EAA, Art 2.
[87] EAA, recital (57).
[88] EAA, Art 7.
[89] EAA, Art 10.
[90] EAA, Art 13.
[91] EAA, Art 4(5) and recital (70)–(72) (micro-enterprises are defined in Art 3(23)).
[92] EAA, Art 14 and recitals (64)–(69).
[93] EAA, Art 4(1) and recital (55).

for implementing the CE marking labelling scheme for products that conform to relevant accessibility requirements,[94] with separate responsibilities being placed on importers,[95] market surveillance authorities and other state authorities to ensure compliance—including by requiring the withdrawal of non-compliant products or services if timely remedial action is not taken to make them accessible.[96] More generally, the EAA requires Member States to establish 'adequate and effective' enforcement mechanisms, including ones that can be used by individual consumers and interested organizations,[97] and to ensure that penalties for breach are 'effective, proportionate and dissuasive'.[98]

3. *Mapping Accessibility Regulation Under the Equality Act 2010*

3.1 *The Machinery of Accessibility Regulation—the EHRC and Other Relevant Regulatory Bodies*

The EHRC is the regulatory body established to promote understanding of and respect for equality and human rights and to enforce and support the implementation of the EqA.[99] It works closely with a wide range of regulators, inspectorates and ombuds offices (such as the Office of Rail and Road, the Office for Standards in Education, Children's Services and Skills, the Planning Inspectorate and the Government Digital Service) to support them in embedding EqA compliance into their regulatory and enforcement work.[100] Brief references will be made to such regulatory bodies at relevant points in the discussion below.

[94] EAA, Art 7(2) and 16–18, and recital (82) (83).
[95] EAA, Art 9.
[96] EAA, Art 19-23 recitals (58)–(61), (84)–(87) and (95).
[97] EAA, Art 29.
[98] EAA, Art 29.
[99] Equality Act 2006, particularly s 3 and 8.
[100] See eg EHRC, *The Role and Experience of Inspectorates, Regulators and Complaints-Handling Bodies in Promoting Human Rights Standards in Public Services* (EHRC, 2009), Available at: https://www.equalityhumanrights.com/en/publication-download/role-an-dexperience-inspectorates-regulators-and-complaints-handling-bodies accessed 4 April 2025; EHRC, 'Our Strategic Plan 2012-2015' (EHRC, 2012); and, more generally, David Barrett, 'Mainstreaming Equality and Human Rights: Factors that Inhibit and Facilitate Implementation in Regulators, Inspectorates and Ombuds in England and Wales' (2024) *International Journal of Law in Context* 1; and 'The Regulatory Space of Equality and Human Rights in Britain: The Role of the Equality and Human Rights Commission' (2019) 39(2) *Legal Studies* 247.

Besides the accessibility-related obligations in the EqA, a range of sector-specific accessibility requirements have also been introduced. Examples include the Accessible Information Standard, applicable to NHS services in England,[101] and the need for all passenger train and station operators to have an Accessible Travel Policy as a precondition of their operating licences.[102] Important though such sector-specific accessibility requirements are, a detailed consideration of them is beyond the scope of this article.

In the remainder of this section, the various ways in which accessibility is regulated by the EqA will be outlined. These will be divided into two broad categories: First, types of EqA action which, although not limited to accessibility, have particular promise and potential as levers for enhancing accessibility; and second, accessibility-specific measures which are set out in or enforced through the EqA.

3.2 *General Equality Act Obligations With Accessibility Relevance*

There are various obligations or forms of liability under the EqA which, although not confined to accessibility, have particular promise as accessibility catalysts. The most significant of these are the anticipatory reasonable adjustment duty, the reactive or responsive reasonable adjustment duty, indirect discrimination and the PSED. Of the first three, breach of all of which constitutes unlawful discrimination, the first is the most significant for present purposes. This is because the reactive or responsive reasonable adjustment duty (operating in contexts of employment and premises) is focussed on retrospectively addressing a disadvantage actually experienced by a particular individual. Its accessibility potential is, therefore, more limited than the anticipatory reasonable adjustment duty, which requires steps to be taken pre-emptively, to prevent disabled people in general being placed at a disadvantage. Indirect discrimination, while overlapping to a considerable extent with the anticipatory reasonable adjustment duty, is less well-developed in the disability context, and less proactively solution-oriented.[103] Accordingly, attention

[101] NHS England, *Accessible Information Standard—Version 1.1* (NHS England, 2017).

[102] See s 71B of the Railways Act 1993 (as amended) and Office for Rail and Road, *Accessible Travel Policy: Guidance for Train and Station Operators* (ORR, 2019).

[103] For a more detailed discussion of the relationship between these three types of discrimination, see eg Anna Lawson, *Disability Equality in Britain: The Role of Reasonable Adjustment?* (Hart Publishing, 2008) ch 4; and 'Disability and Employment in the Equality Act 2010: Opportunities Seized, Lost and Generated' (2011) 40(4) *Industrial Law Journal* 359, 375-379.

will be focused here on the anticipatory reasonable adjustment duty and the PSED, with reference being made to other duties where relevant.

As the below discussion will demonstrate, both the anticipatory reasonable adjustment duty and the PSED are undoubtedly important and potentially powerful tools in requiring and promoting accessibility. Their value and impact, however, have been and continue to be severely constrained by a range of factors.

3.2.1 *The Anticipatory Reasonable Adjustment Duty*

(a) The Duty and its Accessibility Potential

The anticipatory reasonable adjustment duty is imposed on providers of services to the public (such as banks, shops, cafes, hotels, health services, transport services) and providers of public functions (such as planning, public health, policing and prisons) by section 29(7) of the EqA. The content and parameters of the obligation are set out in sections 20-22 and schedules 2 and 3.[104] It requires duty-bearers to continually identify, and take reasonable steps to address, any 'substantial disadvantage' caused to groups of disabled people by a 'provision, criterion or practice';[105] by a physical feature;[106] or by the lack of an auxiliary aid or service.[107]

This duty is intended to promote disability-inclusive approaches (which will necessarily require accessibility) across a wide range of sectors. 'Accessibility' is explicitly mentioned in Section 20(6), which states that where a relevant disadvantage relates to the provision of information, steps which it will be 'reasonable' for the duty-bearer to take include 'ensuring that … the information is provided in an accessible format'.

Authoritative guidance on the operation of the anticipatory reasonable adjustment duty, however, is generally to be found, not in the EqA itself, but in a statutory code of practice.[108]

This Code highlights the 'continuing' and 'evolving' nature of the duty—and that it requires duty-bearers to keep 'the ways they are meeting the duty under regular review' and not to treat it as 'something

[104] See, in particular, schedule 2 s 2(2).
[105] EqA, s 20(3).
[106] EqA, s 20(4) and s 20(9) and (10).
[107] EqA, s 20(5) and s 20(11).
[108] EHRC, *Equality Act 2010 Code of Practice: Services, Public Functions and Associations. Statutory Code of Practice*, 1 January 2011, particularly ch 7.

that needs simply to be considered once only, and then forgotten'.[109] This continuing nature of the duty matters in the accessibility context because new accessibility barriers might be generated (for example as the size or weight of wheelchairs increases) and because new technologies and related developments might well affect the reasonableness of steps to address anticipated disability disadvantage.

The purpose of the duty, according to the Code, is 'to ensure that disabled people are not placed at a substantial disadvantage compared with non-disabled people when using a service'.[110] It emphasizes, in line with case law,[111] that the

> policy of the Act is not a minimalist policy of simply ensuring that some access is available to disabled people; it is, so far as is reasonably practicable, to approximate the access enjoyed by disabled people to that enjoyed by the rest of the public.[112]

This is significant in determining whether disputed steps are 'reasonable' and thus required by the EqA.

The Code notes that whether steps are reasonable is an objective question for courts to decide.[113] Regard must be had to all the circumstances of the case,[114] including the effectiveness of a proposed adjustment in addressing the relevant disadvantage; the practicability, cost and disruptiveness of a particular measure; and the resources available to the duty-bearer.[115]

A number of cases serve to demonstrate the potential of the anticipatory reasonable adjustment duty to foster accessibility. On physical access, in *Roads v Central Trains*[116] the duty was found to have been breached by a train company for failing to provide an accessible route for wheelchair users from one station platform to another; and in *Royal Bank of Scotland v Allen,*[117] the duty was held to have been breached by a bank because its premises were inaccessible to a customer who used a wheelchair. Significantly, and still somewhat unusually, in *Allen* the court issued injunctive relief requiring the bank to install a lift and

[109] Ibid, para 7.27.
[110] Ibid, para 7.35.
[111] *Roads v Central Trains* [2004] EWCA Civ 1541.
[112] EHRC, n 108, para 7.4.
[113] Ibid, para 7.33.
[114] Ibid, para 7.29.
[115] Ibid, para 7.30.
[116] [2004] EWCA Civ 1541.
[117] [2009] EWCA Civ 1213.

remove its physical access barriers. More recently, in *R (on the application of Rowley) v Minister for the Cabinet Office*,[118] the government was held to have breached the anticipatory reasonable adjustment duty because of its failure to ensure live sign language interpretation for important public health broadcasts.

(b) Accessibility-Related Limitations of the Duty

A number of factors weaken the power of the anticipatory reasonable adjustment duty to instigate and secure accessibility. These broadly concern three main issues—scope, awareness and enforcement.

Turning first to scope—the duty is much more limited in scope than Article 9 of the CRPD. It does not, for example, apply to products (unless they are an integral part of a service available to the public), nor to housing, employment, public transport vehicles or physical features in primary and secondary education. These gaps in coverage would, of course, be no weakness in accessibility regulation if they were filled by effective alternatives to the anticipatory duty. Alternatives do indeed apply to aspects of education and transport, which will be considered below. Indirect discrimination and (for public sector employers) the PSED go some way to filling the proactivity gap in employment contexts, but it is nevertheless regrettable that the anticipatory duty was not extended to employment by EqA.[119]

The accessibility potential of the anticipatory reasonable adjustment duty is also weakened by a lack of awareness and understanding of it—amongst duty-bearers, disabled people and their organizations.[120] The House of Lords Committee reported in 2016 that 'witness after witness told us that … the provisions were neither well known nor well understood',[121] noting particular problems as regards service providers' limited knowledge of the existence of the anticipatory reasonable adjustment duty.[122] The duty's lack of visibility is perhaps partly due to the complex way in which it is drafted—with its anticipatory, group-oriented dimensions being mentioned only in obscure terms and in the schedules of the EqA. The EHRC has chosen not to implement the recommendation of the House of Lords Committee that it publish 'a

[118] [2021] EWHC 2108 (Admin).

[119] See further on this point, Lawson, 'Disability and Employment in the Equality Act 2010', n 103.

[120] House of Lords Select Committee on the Equality Act 2010 and Disability, *The Equality Act 2010: The Impact on Disabled People*, 24 March 2016, HL 117 paras 201–208; and House of Commons Women and Equalities Committee, n 20, paras 63-69.

[121] House of Lords Committee, n 22, para 201.

[122] Ibid, paras 202-208.

specific Code of Practice on reasonable adjustments'.[123] It has, however, published non-statutory guidance on reasonable adjustments aimed at disabled people[124] and engaged in a number of relevant sector-specific initiatives.[125]

Particularly severe constraints on the power of the anticipatory duty to drive accessibility forward lie in its enforcement. The burden of enforcement, which is a heavy one, falls primarily on individual claimants.[126] Despite the duty's anticipatory, group-oriented dimension, enforcement is retrospective in that it requires the claimant to have experienced a 'substantial disadvantage' as a result of a duty-bearer's failure to make necessary adjustments.[127] The duty cannot therefore be relied on proactively to prevent inaccessible systems and structures from being installed from the outset.

Furthermore, the potential cost and financial risk of bringing such cases (heard by county and sheriff courts rather than by lower-cost tribunals) is likely to run into tens of thousands of pounds and is thus a major deterrent to potential claimants ineligible for legal aid.[128] This problem was exacerbated by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which limited the types of costs that successful claimants can recover from defendants, without granting any protection to unsuccessful claimants in discrimination cases (unlike personal injury cases) against the risk of orders requiring them to pay the defendant's costs. This issue, which has been under governmental review since 2019,[129] is currently the subject of an active Ministry of Justice consultation[130] which, it is to be hoped, will result at least in discrimination claimants having equivalent protection against the award of costs

[123] Ibid, para 231 and recommendation 18.

[124] EHRC, *Using a Service: Reasonable Adjustments for Disabled People*, 2 December 2019.

[125] See eg EHRC, *Retailers' legal responsibility to disabled customers*, 4 September 2020.

[126] For parliamentary criticism see eg House of Lords Select Committee, n 22; House of Commons Women and Equalities Committee, n 20; House of Commons Women and Equalities Committee, *Enforcing the Equality Act 2010: The Role of Law and the Equality and Human Rights Commission*, 17 July 2019, HC 1470; and House of Commons Transport Committee, n 14.

[127] EqA, s 21.

[128] House of Commons Women and Equalities Committee, n 20, para 193.

[129] Ministry of Justice, *Post-Implementation Review of Part 2 of the Legal Aid, Punishment and Sentencing of Offenders Act 2012, Civil Litigation Funding and Costs*, February 2019.

[130] Ministry of Justice, 'Costs Protection for Discrimination Cases: Call for Evidence' (27 November 2024), available at https://www.gov.uk/government/calls-for-evidence/costs-protection-for-discrimination-claims/costs-protection-for-discrimination-claims-call-for-evidence accessed 3 April 2025.

against them as is granted to claimants in personal injury cases. Even if this happens, it seems unlikely that changes will be made to reduce the costs required simply to bring a case.

Closely connected with the deterrent effect of actual and potential costs is the inevitable uncertainty about whether or not a particular case will succeed. This is a downside of the flexibility associated with the notion of 'reasonableness'—the upside of which, in reactive reasonable adjustment cases at least, is that it makes space for a solution-oriented focus on tackling the disadvantage experienced by the particular claimant in the particular circumstances. In accessibility cases, however, there is less need for a high degree of flexibility—the focus instead being on working toward systems, structures and practices—guided by accessibility standards where available and appropriate—that maximize access and inclusion for all. Section 22 of the EqA, which grants the government power to issue regulations specifying that certain types of steps should always be regarded as reasonable, provides a mechanism through which the uncertainty associated with 'reasonableness' could be reduced. This power, however, has not been used since the EqA was enacted.

3.2.2 *The Public Sector Equality Duty*

(a) The Duty and its Accessibility Potential

The PSED, set out in S 149 EqA, requires public authorities[131] to have 'due regard' to three broad equality aims when exercising their functions. These are the need to: first, 'eliminate discrimination' and any other conduct prohibited by the EqA; second, 'advance equality of opportunity' for people with protected characteristics, including disability; and third, 'foster good relations' between people with and without such characteristics.[132] Although accessibility is not an explicit focus of these three aims, it is implicit in the application of all three as regards disability.

The PSED aims to embed equality (and thereby accessibility) considerations into the routine decision-making processes of public bodies. It is an obligation relating to process, rather than outcome. If it is breached, the PSED can be used to challenge the legality of the public body's decision by way of an action for judicial review.[133] If successful,

[131] Guidance on the meaning of 'public authority', for these purposes, is set out in s 50 and sch 19 of the EqA.
[132] EqA, s 149(1).
[133] EqA, s 156.

such a challenge will generally result in the decision being set aside,[134] although additional remedies are available in exceptional cases.[135] A public authority found to have breached the PSED might well reach the same decision again but, as long as it has had 'due regard' to the three equality aims, there will no longer be a breach of the PSED.

The general PSED duty to have 'due regard' is supplemented by 'specific' duties[136], requiring public authorities to set equality objectives and outcomes. There are differences between the specific duties applicable in England,[137] Wales,[138] and Scotland[139]—with involvement and consultation being required in Scotland and Wales but not in England.

Breach of the general duty may be enforced by any person or organization with 'a sufficient interest' in the decision being challenged.[140] Unlike the anticipatory reasonable adjustment duty, there is no requirement for a claimant to have experienced a 'substantial disadvantage'—a fact which makes the PSED more attractive as a means of preventing the building or creation of inaccessible infrastructure or systems. The EHRC also has the power to bring judicial review proceedings for alleged breaches of the PSED.[141] It also has the power, after assessing the particular circumstances,[142] to issue a compliance notice if it considers that authority is in breach of its general or specific duties.[143] This is indeed the only way in which the PSED-specific duties can be enforced.

An early example of a case in which the 'due regard' duty was used to strengthen accessibility is *R (on the application of Lunt) v Liverpool City Council*.[144] In that case Mrs Lunt, a wheelchair-user, successfully challenged the Council's refusal to license a particular model of accessible taxi, thereby continuing its policy of licensing only the (then) London-style taxi model which Mrs Lunt and others found less accessible and convenient than the rejected alternative. One of the reasons for this decision was the Council's failure to have 'due regard' to the need to eliminate discrimination and promote equality.[145] Another

[134] Senior Courts Act 1981, s 31(1).
[135] See generally Dave Cowan and Joe Tomlinson, 'Crisis Relief? Public Resources and Judicial Review Remedies' (2023) *Public Law* 495.
[136] EqA, s 153 and 154.
[137] EqA (Specific Duties) Regulations 2011 (SI 2011/2260).
[138] EqA (Statutory Duties) (Wales) Regulations 2011 (SI 2011/1064).
[139] EqA (Specific Duties) (Scotland) Regulations 2012 (SI 2012/162).
[140] Senior Courts Act 1981, s 31(3).
[141] Equality Act 2006, s 30(1) and (2).
[142] Ibid, s 31(1) and sch 2.
[143] Ibid, s 32(2).
[144] [2010] 1 CMLR 14.
[145] This case was decided under the Disability Equality Duty set out in s 49A of the DDA, which was replaced by the PSED in substantially similar terms.

early successful case is *R (on the application of Ali) v London Borough of Newham.*[146] There the overturned decision was that of the Council to introduce guidance for tactile markings on pavements, which blind people argued fell short of national guidance on the issue.[147]

(b) Accessibility-Related Limitations of the Duty

Despite the PSED's promise as a means of embedding accessibility into the decision-making of public authorities, the extent to which it makes a significant positive difference in practice is at best highly questionable.[148] Concerns about its effectiveness are closely connected with difficulties in its enforcement.

Two important factors operate to off-set the apparent benefits associated with the PSED's potential to be used prior to an accessibility barrier actually being created. First, the time limit of three months from the date of the contested decision[149] is extremely tight—particularly as claimants may not always be aware of when such decisions have been made. Second, as illustrated by *Rowley v The Cabinet Office,*[150] PSED claims will fail if defendants pay 'due regard' to the three equality aims, even if they do so at a very late stage after judicial review proceedings have begun.

Another apparent strength of PSED claims is that they can be brought by organizations as well as by individuals, provided they have a sufficient interest in the decision in question. In practice, however, disability organizations are seldom likely to be in a position to bring PSED claims, given the substantial cost of High Court cases and tightening constraints on their budgets.

Finally, as with the anticipatory reasonable adjustment duty, the capacity of the EHRC to fund strategic accessibility (and other) cases, as well as to promote and oversee implementation of the PSED more generally, has been badly affected by very sharp cuts to its funding.[151]

[146] [2012] EWHC 2970 (Admin).

[147] This case, like *Lunt*, was decided under s 49A of the DDA—the predecessor of the PSED.

[148] See eg, Lawson et al, n 19.

[149] Civil Procedure Rules 1998, r 54.5; and Court of Session Act 1988, s 27A.

[150] [2021] EWHC 2108 (Admin).

[151] See eg House of Commons Women and Equalities Committee, *Enforcing the Equality Act 2010*, n 126, paras 26 and 43–45; and Hazel Conley and Tessa Wright, 'Making Reflexive Legislation Work: Stakeholder Engagement and Public Procurement in the Public Sector Equality Duty' in Equality and Diversity Forum and EDF Research Network (eds), *Beyond 2015: Shaping the Future of Equality, Human Rights and Social Justice (*Equality and Diversity Forum, 2015) 54.

Its budget fell from £70.3 million in 2007 to £17.1 million in 2022–2023[152]—a development which high profile commentators rightly predicted would damage the impact of the PSED.[153]

3.3 *Accessibility-Specific Obligations in the Equality Act 2010*

3.3.1 *Accessibility Plans and Strategies*

This form of regulation applies in the context of schools, where the anticipatory reasonable adjustment duty does not extend to physical features—applying only to disadvantages associated with provisions, criteria and practices and lack of appropriate auxiliary aids and services.[154] Local authorities (in England and Wales) are required to prepare, review, update and implement accessibility strategies for schools for which they are responsible. These strategies set out plans for enhancing the inclusiveness of the physical environment, the curriculum, and information delivery. They must be adequately resourced, reviewed periodically, made available in writing and take account of preferences expressed by pupils and parents.[155] Similar obligations, though termed 'accessibility plans' rather than 'strategies', are imposed on schools themselves.[156] Accessibility plans and strategies are subject to inspection. Thus, School inspection processes extend to performance in the 'preparation, publication, review, revision and implementation' of accessibility plans.[157] Local authorities' accessibility strategies must also be available for inspection as required.[158] In the event of breach or non-compliance, the Secretary of State may issue directions, requiring specified action to be taken.[159]

Serious concerns about the effectiveness of this accessibility plan system were raised in a 2019 study of secondary schools in England by the Alliance for Inclusive Education (ALLFIE).[160] This found that disabled

[152] Government Equalities Office, *Corporate report: Equality and Human Rights Commission: annual report and accounts 2022 to 2023* HC1703 (2023), paras 25–27, available at: <www.gov.uk/government/publications/equality-and-human-rights-commission-annual-report-and-accounts-2022-to-2023> accessed 3 April 2025.

[153] See eg Bob Hepple, 'Enforcing Equality Law: Two Steps Forward and Two Steps Backwards for Reflexive Regulation' (2011) 40(4) *Industrial Law Journal* 315; and Nick O'Brien, 'Positive about equality: the PSED under threat' (2013) 84(4) *Political Quarterly* 486.

[154] EqA, sch 13, s 2(2).

[155] EqA, sch 10 s 1 and 2.

[156] EqA, sch 10(3) and (4).

[157] EqA, sch 10, s 3(7) and (8).

[158] EqA, sch 10, s 3(5).

[159] EqA, sch 10, s 5(5).

[160] Armineh Soorenian, *Accessibility Plans as Effective Tools for Inclusion in Schools: Are they Working?,* Disability Research on Independent Living and Learning and the Alliance for Inclusive Education (2019).

pupils and their parents were often unaware that their school had an accessibility plan. Only 23% of parents, and 51% of professionals, felt that accessibility plans had actually improved access. Accordingly, the Alliance for Inclusive Education is calling for improved national guidelines and toolkits to support schools in producing and implementing robust and effective accessibility plans. It also calls for accessibility plans to be given higher priority in school inspections through a mandatory duty on OFSTED to 'routinely monitor the impact and implementation of Accessibility Plans, and to include their findings in school inspection reports'.[161]

3.3.2 *Accessibility Standards Used in Connection With the Anticipatory Reasonable Adjustment Duty*

There are two quite different ways in which accessibility standards are used in connection with the enforcement of the reasonable adjustment duty in the EqA. The first involves Part M of the Building Regulations 2003[162] and the second involves the Public Sector Bodies (Websites and Mobile Applications) (No 2) Accessibility Regulations 2018 (PSBAR). Each will now be considered in turn.

The accessibility standards in Part M are made relevant to assessments of reasonableness (for purposes of the reasonable adjustment duty) by the Equality Act 2010 (Disability) Regulations 2010.[163]

These specify that, if a physical feature has been installed in order to enhance access and in compliance with Part M of the Building Regulations, it will not be reasonable for a provider of services or public functions to have to alter that physical feature for a period of 10 years following its installation. Thus, compliance with Part M's accessibility standards creates a 10-year exemption from liability for breach of the reasonable adjustment duty. If the standards in question were strong and up-to-date, the approach might have some merit. As they are neither, however, this decade-long exemption from the requirement to make adjustments to physical features which disadvantage disabled people is troubling.[164]

[161] See further <https://www.allfie.org.uk/inclusion-resources/accessibility-plans-as-effective-tools-for-inclusion-in-schools-are-they-working/#:~:text=Accessibility%20Plans%20are%20supposed%20to,alternative%20formats%20as%20standard%20practice> accessed 23 March 2025.

[162] Office of the Deputy Prime Minister, *Part M (Access to and Use of Buildings) of Schedule 1 to the Building Regulations 2000* (Stationery Office, 2003).

[163] Equality Act 2010 (Disability) Regulations 2010, reg. 9 and para 1 of the schedule.

[164] House of Commons Women and Equalities Committee, n 20, para 134.

The PSBAR originated in an EU directive,[165] and address the accessibility of websites and mobile applications provided by public bodies for public use. Although this same subject matter had always fallen within the scope of the anticipatory reasonable adjustment duty, the DDA and the EqA had made little progress in ensuring that such digital spaces and systems were accessible.[166] The 2018 regulations, however, have a more systemic approach, which includes an emphasis on monitoring. This means that, in the words of Lewthwaite and James, the Regulations have 'potential to remake the digital landscape'.[167]

The PBSAR require the websites, documents and apps of public bodies to be 'perceivable, operable, understandable and robust',[168] which can be achieved by compliance with relevant Web Consortium Accessibility Guidelines (currently level AA). Public sector bodies are also required to publish 'accessibility statements', which identify and give reasons for any respects in which the website is not fully accessible, explain how individuals can seek accessibility-related help from the website host and report problems to the relevant monitoring body.[169] The Government Digital Service (within the Cabinet Office) is charged with monitoring compliance by carrying out regular checks of samples of public sector websites, taking into account any reported accessibility concerns.[170] Failures to comply with these Regulations are treated as breaches of the EqA's reasonable adjustment duty,[171] enforceable by the EHRC.[172]

The fact that the PSBAR shifts responsibility for compliance monitoring and enforcement away from disabled individuals is potentially very significant. A 2021 report by the government's Central Data and Digital Office indicated that virtually none of the websites visited were fully compliant but that, when problems were drawn to the attention

[165] Directive 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L327/1.

[166] See eg House of Commons Work and Pensions Committee, *Assistive Technology: Tenth Report of Session 2017–2019* (2018); and Catherine Easton, 'Revisiting the Law on Website Accessibility in the Light of the UK's Equality Act 2010 and the UN Convention on the Rights of Persons with Disabilities' (2012) 20(1) *International Journal of Law and Information Technology* 19.

[167] Sarah Lewthwaite and Abi James, 'Accessible at Last? What do New European Digital Accessibility Laws Mean for Disabled People in the UK?' (2020) 35(8) *Disability & Society 1360, 1360-1.*

[168] Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018, reg. 3.

[169] Ibid, regulation 8.

[170] Ibid, regulation 10.

[171] Ibid, regulation 12.

[172] Ibid, regulation 11.

of website owners as part of the monitoring process, 59% of them took remedial action.[173] Although, as Christopherson observes, it is 'disturbing' that '[a]fter many, many years of legislation requiring organizations to make their websites accessible, almost all of the most important and highly visited sites of central and local government … have basic accessibility issues that will be excluding disabled visitors' but '[f]inally, with PSBAR, the legislation has been given teeth'.[174]

3.2.3 *Accessibility Standards Enforced Through Criminal Law and Authorisations to Operate*

The EqA grants power to the Secretary of State to introduce regulations setting out accessibility standards for regulated taxis, public service vehicles and rail vehicles.[175] In the absence of exemptions, conformity with the regulations is a precondition for the award of taxi licences,[176] the use of regulated public service vehicles (which cannot be used without an accessibility certificate[177] or approval certificate),[178] and rail vehicles (which cannot be used without a compliance certificate).[179] For taxis and public service vehicles, failure to comply is also punishable as a criminal offence.[180] For rail vehicles, failure to comply may incur liability to pay a financial penalty, albeit not through criminal law.[181]

These regulation-making powers allowed time for operators to transition to accessible vehicles—January 2020 is the target date specified for rail vehicles.[182] It appears that the vast majority of rail vehicles[183] and virtually all public service vehicles[184] now meet the requirements of the long-standing accessibility regulations, although there is, of course, an

[173] Central Digital and Data Office, 'Accessibility Monitoring of Public Sector Websites and Mobile Apps 2020–2021', 20 December 2021, available at < https://www.gov.uk/government/publications/accessibility-monitoring-of-public-sector-websites-and-mobile-apps-2020-2021> accessed 26 March 2025.

[174] Robin Christopherson, *How Well have the Public Sector Website Regulations Been Applied?*, AbilityNet, 22 May 2024, available at < https://abilitynet.org.uk/news-blogs/how-well-have-public-sector-accessibility-regulations-been-applied> accessed 26 March 2025.

[175] EqA, s 160(1), 174(1) and 182(1) respectively.

[176] EqA, s 163.

[177] EqA, s 176.

[178] EqA, s 177.

[179] EqA, sch 20 s 1.

[180] EqA, s 160(4) and (5) and s 175, 176(3) and (4), respectively.

[181] EqA, sch 20 s 5–12.

[182] EqA, s 182(6).

[183] House of Commons Transport Committee, n 14, para 50.

[184] Cabinet Office, Disability Unit, n 11, 40.

ongoing need for relevant standards to be updated and strengthened.[185] For taxis and private hire vehicles, the figures are more concerning—with only 58% of the former being wheelchair accessible and only 2% of the latter.[186]

Beyond vehicle design, specific duties are imposed on drivers of 'designated'[187] taxis and private hire vehicles relating to passengers who are wheelchair users.[188] Similar duties are imposed on drivers of taxis and private hire vehicles in relation to passengers who have assistance dogs.[189] Breach of these duties amounts to a criminal offence, punishable by a fine. While this alternative enforcement model has the merit of taking the enforcement burden away from disabled individuals, it is also problematic—with the numbers of prosecutions being much lower than the numbers of reported complaints, and rates of enforcement varying markedly between different parts of the country.[190]

4. *Envisioning a New UK Approach to Accessibility Regulation*

4.1 *High-Level Accessibility Strategy*

Although accessibility is a recurrent theme in the UK Disability Strategy 2021,[191] there is currently no national multisectoral strategy or plan addressing accessibility across all the dimensions highlighted in the CRPD—namely the built environment; transport; information, communication and ICT; and facilities and services open to the public. The current approach is fragmented and patchy. The sector in which there is the most far-reaching accessibility-oriented strategy is transport,[192] and

[185] See points made by House of Commons Transport Committee, n 14, para 113. See also accessibility requirements imposed by the relatively recent Public Service Vehicles (Accessible Information) Regulations 2023; and Department for Transport, *Review of the Public Service Vehicles Accessibility Regulations 2000: Call for Evidence*, 12 June 2023, available at https://www.gov.uk/government/calls-for-evidence/review-of-the-public-service-vehicles-accessibility-regulations-2000/review-of-the-public-service-vehicles-accessibility-regulations-2000 accessed 3 April 2025.

[186] Cabinet Office, Disability Unit, n 11, 40.

[187] This entails being included on a list of designated vehicles compiled by the relevant licencing authority, in accordance with EqA, s 167.

[188] EqA, s 165 and 168, respectively.

[189] EqA, s 168 and 170.

[190] House of Commons Transport Committee, n 14.

[191] Cabinet Office, Disability Strategy, n 11.

[192] Department for Transport, *Inclusive Transport Strategy* (DFT, 2018).

it is clear from the Transport Committee's recent report that this is in need of a serious overhaul.[193] Calling for a new strategy, it said:

> Government policy has hitherto set out welcome and necessary ambitions, but the plans for achieving these and the resources committed to doing so (especially in relation to infrastructure) have not been equal to the task. The demands of accessibility have too often been set aside when deemed to be in conflict with other policy goals, technical requirements or cost pressures.[194]

In the built environment context too, the need for greater strategic leadership and oversight from government has been urged by a parliamentary committee.[195]

The Accessible Canada Act provides a useful model for a more cohesive approach to accessibility planning. Like it, a UK Accessibility Act could lay down high-level accessibility objectives, emphasize the importance of embedding accessibility considerations across all policy domains, and unequivocally recognize accessibility as a human rights concern. As the Transport Committee stated, 'accessibility urgently needs to be recognised as an issue of human rights and protection from discrimination, not as an optional customer service matter'.[196] Such acknowledgement is also fundamental to the UK's implementation of its CRPD obligations.

As well as highlighting the significance of accessibility as a matter of human rights and inclusion, intersectional and universal design approaches should be clearly embedded into relevant strategic planning and implementation—both being integral to the CRPD.[197] In Canada, some provincial accessibility legislation has been criticized for failing to attend sufficiently to issues of intersectionality.[198] There has been a similar failing in some such legislation to highlight principles of universal design, and the associated wider benefits of accessibility[199]—a factor which, it has been suggested, may weaken implementation.[200]

[193] House of Commons Transport Committee, n 14, ch 3.
[194] Ibid, 2.
[195] House of Commons Women and Equalities Committee, n 20, 10–18.
[196] House of Commons Transport Committee, n 14, 2.
[197] See eg, on universal design, article 4(f), CRPD Committee, General Comment No 2, n 36, paras 15 and 16 and General Comment No 4, n 26, para 21; and, on intersectionality, articles 6 and 7 and CRPD Committee, 'General Comment No 6 on Equality and Non-Discrimination', CRPD/C/GC/6 (26 April 2018), paras 11, 19, 22 and 32.2.
[198] See eg Laverne Jacobs, Britney De Costa & Victoria Cino, 'The Accessibility for Manitobans Act: Ambitions and Achievements in Antidiscrimination and Citizen Participation' (2016) 5(4) *Canadian Journal of Disability Studies* 1, 10; and Beaudry, n 61, 26–27.
[199] Beaudry, n 61, 27–29.
[200] Tim Ross, 'Advancing Ontario's Accessibility: A Study of Linguistic, Discursive, and Conceptual Barriers' (2013) 221 *Canadian Journal of Urban Research* 126, 139.

Interestingly, Norway's Equality and Anti-Discrimination Act 2017 imposes a duty to achieve 'universal design' (breach of which constitutes unlawful discrimination[201]) and specifies that this duty requires that 'the general functions of the [organization] can be used by as many people as possible, regardless of disability'.[202] This formulation thus explicitly foregrounds universal design, whilst placing disability (and therefore accessibility) at its core. It is an approach which would merit consideration by those drafting UK accessibility legislation.

While sector-specific action and planning on accessibility are of course needed, bringing different sectors together under one overarching strategic umbrella would have a range of benefits, including the potential for more streamlined, simple structures and systems and for the building and sharing of expertise and good practice across sectors. This point was also made by advocates for the Accessible Canada Act prior to its enactment. Thus, in the words of Lepofsky:

> Splintered, piecemeal accessibility strategies in large organizations like the Federal Government are too often ineffective. A comprehensive national accessibility law can avoid duplication of effort, and ensure the most progress.[203]

A broad UK Accessibility Act would thus have benefits over a series of separate sector-specific efforts to develop discrete accessibility strategies. In line with the CRPD, accessibility obligations should extend to private as well as public sectors. Questions about scope, however, are best addressed in the context of the different types of obligation a UK Accessibility Act might impose and accordingly will be considered in section 4.2.2 below.

Like the ACA, UK legislation could helpfully lay down the architectural foundations of a strategic framework for accessibility—establishing the necessary oversight, monitoring and enforcement infrastructure and outlining the key roles and responsibilities of each element of it. The ACA also provides a useful template for what that infrastructure might comprise. In the UK context, this could entail an Accessibility Minister, with overall responsibility for the successful delivery of the strategy, supported by an Accessibility Unit or Office, perhaps situated

[201] Equality and Anti-Discrimination Act, s 12.

[202] Ibid, s 17. See also s 18 and, for interesting reflection on the relationship between universal design and accessibility in this context, Bringa, n 24.

[203] David Lepofsky, What Should Canada's New Promised Accessibility Law Include? A Discussion Paper' (2018) *National Journal of Constitutional Law* 169, at Section 2.

in the Cabinet Office alongside the Disability Unit. A UK Accessibility Standards Board sitting within the British Standards Institute would play a key role. As with the ACA equivalent, mechanisms should be included to ensure a strong representation of disabled people and their organizations on this Board, as well as from other stakeholders with relevant professional expertise. Also key is effective monitoring and enforcement infrastructure—an issue which will be addressed under monitoring and enforcement below.

Careful consideration would need to be given to the use of timelines and goals in any UK Accessibility Act. The ACA specifies 2040 as an endpoint. The CRPD Committee, as discussed above,[204] has stressed that goals and timelines are essential for effective implementation. Nevertheless, signalling an endpoint by which accessibility will have been achieved risks giving the impression that no accessibility regulation will be needed after that time. As the CRPD Committee notes in its General Comment No 4, however:

> Accessibility is a dynamic concept and its application requires periodic regulatory and technical adjustments.[205]

Ensuring accessibility is not a task that can be completed. It requires ongoing training, monitoring and enforcement.

A UK Accessibility Act should therefore include definite timelines and goals, including for the rolling out of key accessibility standards.[206] It should, however, be envisaged as an ongoing commitment, albeit that significantly more work and resources will be required in its first two decades while long-established accessibility barriers are being systematically dismantled.

Accessibility legislation needs to build mechanisms that will allow sufficient flexibility to respond to technological advancements and other developments. This is achieved in the ACA by the power to introduce regulations, including ones which extend the scope of the Act, and others that confer binding status on accessibility standards.[207] Similar regulation-making powers should be included in a UK Act.

Finally, reference should be made to Article 4(3) of the CRPD and its requirement that disabled people be actively involved in the

[204] See Section 2.1.3.
[205] CRPD Committee, *General Comment No 4*, n 26, para 21.
[206] The lack of which in the ACA has been a cause for concern—see eg Beaudry, n 61, 25-6.
[207] See Section 2.2.1.

development and implementation of measures affecting them.[208] The importance of such involvement in the effectiveness of accessibility policies was recently highlighted by the House of Commons Transport Committee[209] and, before that, by its Women and Equalities Committee which, in its report on the Built Environment and Disability, quoted with approval the Design Council's observation that:

> Engaging individuals and groups in all stages of a project is indispensable. Without it, there is a continuing risk that we create homes, public buildings and spaces which cannot be used by significant numbers of people.[210]

In light of widespread concerns about the quality and effectiveness of accessibility-related involvement and consultation practices in public sector bodies,[211] however, there is a need for clear guiding principles, themselves co-produced with disabled people, to underpin relevant involvement requirements.[212] A useful starting point is the guidance on this issue published by EHRC Scotland in 2016.[213]

4.2 *Accessibility Obligations*

4.2.1 *General Considerations*

The three main types of obligation imposed by the Accessible Canada Act and outlined above[214] provide a useful starting point for shaping a UK Accessibility Act. The restrictions on the scope of the ACA associated with it being a piece of federal legislation, however, do not apply to a future UK Accessibility Act and there are compelling reasons for extending the scope of the third obligation—concerning compliance with accessibility regulations—to entities other than those to which the first two types of obligation apply. Accordingly, the coverage or scope of obligations will be addressed separately in connection with each obligation.

[208] For guidance on which see CRPD Committee, *General Comment No 7 on the Participation of Persons with Disabilities, Including Children with Disabilities, Through Their Representative Organizations, in the Implementation and Monitoring of the Convention*, CRPD/C/GC/7 (9 November 2018).

[209] House of Commons Transport Committee, n 14, para 38.

[210] Women and Equalities Committee, n 20, 14.

[211] See eg Lawson et al, n 19, 8–17.

[212] See the recommendation to this effect in House of Commons Women and Equalities Committee, n 20, 15.

[213] Debbie Abrahams et al, *Involvement and the Public Sector Equality Duty: A Guide for Public Authorities in Scotland* (EHRC Scotland, 2016).

[214] See section 2.2.1.

None of the obligations proposed here would replace general EqA obligations, such as the anticipatory reasonable adjustment duty or the PSED. They could, however, replace some of the more specific EqA requirements relating to education and transport, as will be discussed below.

4.2.2 *Types of Obligation*

(a) Accessibility Planning

A UK Accessibility Act should, it is suggested, include similar planning obligations to those in the ACA, entailing the preparation, publication, implementation and updating of accessibility plans. Guidance as to the form and content of these plans should be provided, perhaps by way of a regulation-making power conferred by the statute, and through a process that has the full involvement of disabled people, including those on the Accessible Standards Board. It would also be important to include an obligation for accessibility plans themselves to explain how disabled people were involved in their preparation and review, as under the ACA.

This obligation would extend to public sector bodies. Consistently with the scope of Article 9 of the CRPD, it should also apply to private sector providers of services to the public, with the possibility of lighter-touch plans being required of smaller providers. There would also be the potential of extending it to large private sector organizations, even if they are not service providers, in order to encourage proactive accessibility planning for current and future employees.

Accessibility planning obligations such as these would sit comfortably alongside the PSED, supporting public sector bodies in their obligations to have 'due regard' to issues of accessibility—a precondition for equality—for disabled people and for many older people, children and others besides. It would also support duty-bearers in their obligations under the anticipatory reasonable adjustment duty, to continuously monitor all aspects of their provision of services and public functions and take reasonable steps to remove potentially disabling barriers. These new duties to make accessibility plans could also replace the current EqA obligations on schools and local authorities to produce accessibility plans and strategies.

(b) Obligations to Establish Mechanisms for Receiving and Responding to Accessibility Feedback

Such obligations, informed by similar duties in the ACA, provide a valuable supplement to accessibility planning obligations. They would

ensure that disabled people had opportunities to feed in their thoughts on how effectively organizations are implementing their accessibility plans and that individuals who encounter accessibility problems with a particular organization would have a simple and well-publicized mechanism through which to raise their concerns. Furthermore, the obligation would ensure that the duty-bearer in question would be required to take note of relevant feedback and either take remedial action or explain why it is not doing so.

Feedback obligations of this type thus build in a dynamic, relatively light-touch process for ensuring that duty-bearers are made aware of accessibility barriers and concerns and that they take steps to address them. They thus operate as a valuable complement to the more static accessibility planning obligations—and should be imposed on the same entities to which those planning duties apply.

This type of feedback obligation is obviously dependent on duty-bearers being required to submit regular reports on their feedback mechanisms, the feedback received and the steps they have taken in response. Such reporting requirements could potentially be rolled into the requirement to produce periodic accessibility plans. Individuals experiencing accessibility barriers, however, should also have the option of making a complaint to the monitoring and enforcement body (discussed below) if appropriate action is not taken; and will, of course, be free to bring an EqA case in respect of the accessibility failure. In order to encourage the use of the more informal feedback mechanisms, consideration should be given to extending the time limit for bringing EqA actions to allow time for the feedback process to achieve resolution prior to commencing EqA proceedings.

(c) Compliance with Accessibility Regulations

Effective use of a regulation-making power by the Accessibility Minister would, as mentioned above, be critical to the success of a UK Accessibility Act in the same way as is the use of the equivalent power under s 117 of the ACA. Regulations will vary in nature. Some may be free-standing, in that all relevant information is contained within them. Others may specify a broad accessibility-related requirement on which more detail is provided by way of reference to specified accessibility standards. A regulation, for example, might require functional accessibility in a particular domain (which may be broadly or narrowly defined), stating that compliance with a specified accessibility standard will achieve necessary conformity. This latter type of regulation would thus require planners and designers to ensure that the relevant subject matter is designed so

that it does not exclude users who have any type of sensory, physical or cognitive impairment, giving designers some flexibility about how they achieve the required level of functional accessibility.[215]

The entities to be bound by a particular regulation should be clearly specified in that regulation. This would create the necessary flexibility to introduce sector-specific accessibility regulations, alongside more general ones aimed at all entities obliged to comply with the accessibility planning and feedback obligations discussed above. Clear principles should be established in relation to procurement so that any entity bound by a regulation must ensure that the products and services it purchases also comply with relevant accessibility regulations. It is also critical that there be a power to issue regulations which bind entities other than those subjected to accessibility planning and feedback obligations, such as manufacturers, importers and distributors.

As regards manufacturers, there are compelling reasons for imposing accessibility requirements on them in the UK, analogous to those imposed by the EAA. This would give disabled people in the UK similar entitlements to those enjoyed by their counterparts in EU countries to expect relevant products to be useable and, in the event of non-compliance, to have a means of redress. It would avoid the current regrettable situation in which UK manufacturers can be held to account for accessibility failures by disabled people in other countries, but not by disabled people in the UK. Based on the requirements of the CRPD and the impact of ongoing accessibility barriers on the day-to-day lives of disabled people, it is suggested that there is also a very strong case for issuing accessibility regulations covering other products, beyond those falling within the current scope of the EAA. Examples include remote controls and mobile apps used to operate heat pumps and other heating systems, electric fires and other household devices, and the operating systems for white goods such as microwaves, cookers, washing machines and dishwashers.[216] Such regulations could either require functional accessibility or, if there were convincing reasons making this

[215] See the discussion of the European Accessibility Act, n 82 and accompanying text; and Hosking, n 77.

[216] See generally, although not focussed on the UK specifically, Jong Hee Lee et al, 'A Persona-Based Approach for Identifying Accessibility Issues in Elderly and Disabled Users' Interaction with Home Appliances' (2021) 11(1) *Applied Science* 368. See also Daniel Williams, 'Inaccessible Kitchen Nightmares: A Letter to Domestic Appliance Manufacturers', 2 August 2023, available at https://www.linkedin.com/pulse/inaccessible-kitchen-nightmares-letter-domestic-dan-williams#:~:text=I%20am%20not%20only%20frustrated,you%20at%20your%20earliest%20convenience accessed 3 April 2025; and Connor Scott-Gardner,

impractical, require manufacturers to issue accessibility statements for these products, clearly highlighting respects in which the product in question is not accessible. This latter type of requirement, while not as strong as one requiring accessibility, would have the significant merit of requiring manufacturers to apply their mind to questions of accessibility and of making service providers and customers aware of possible accessibility risks, which would inform decisions by disabled people about purchases or where to live.

Regulation-making powers under a new UK Accessibility Act should replace powers granted under the EqA to issue regulations about accessibility in the context of public transport, as discussed above. In other respects, they would simply sit alongside the EqA. The Secretary of State's power to introduce regulations relating to reasonable adjustments, under Section 22 of the EqA, could be used to lay down a presumption that non-compliance with an accessibility regulation constitutes a failure to take reasonable steps for purposes of the reasonable adjustment duty. This approach, similar to that adopted in Norway,[217] would have the combined benefit of giving additional force to accessibility regulations and strengthening the impact of reasonable adjustment duties.

4.3 *Monitoring and Enforcement*

The success of a UK Accessibility Act will depend on the effectiveness of its approaches to monitoring and enforcement. The Canadian approach to establishing the office of Accessibility Commissioner within the Human Rights Commission has much to recommend it. In the UK, an Accessibility Ombud, with dedicated ring-fenced resources, could be established and supported by an Accessibility Advisory Committee (along the lines of the EHRC's now disbanded Disability Committee), consisting of key stakeholders and a majority of disabled members. This Accessibility Ombud would have responsibility for overseeing the effective monitoring of compliance with obligations relating to accessibility

Why I'm Campaigning for Accessible Home Appliances, Working Blind Podcast, 1 February 2024, available at https://catchthesewords.com/why-im-campaigning-for-accessible-home-appliances/ accessed 3 April 2025.

[217] Equality and Anti-Discrimination Act 2017, especially s 12, 17 and 18. See generally, for discussion of this and its predecessor legislation, Inger Marie Lid, 'Implementing Universal Design in a Norwegian Context: Balancing Core Values and Practical Priorities' (2016) 36(2) *Disability Studies Quarterly*; Maria Ventegodt Liisberg, 'Accessibility of Services and Discrimination: Concentricity, Consequence, and the Concept of Anticipatory Reasonable Adjustment' (2015) 15 (1-2) *International Journal of Discrimination and the Law* 123; and Bringa, n 24.

plans and accessibility feedback and response mechanisms. Monitoring would need to be carried out in partnership with relevant sector-specific regulators, inspectorates and ombuds and to be underpinned by principles of involvement, responsiveness to emerging accessibility challenges, and transparency.

In terms of enforcement, there is a clear need for mechanisms designed to achieve systemic and wide-scale change, which would lighten the enforcement burden placed by the EqA on disabled individuals. A range of accessibility enforcement models is now emerging, a study of which would help inform a UK approach. Examples can be found in Canada as well as in EU countries (which are obliged to establish such mechanisms by the EAA). A more detailed analysis of these various approaches than can be provided here would certainly merit investigation but, for current purposes, two key common features can be identified and, it is suggested, that both need to feature in a UK approach. First, there would need to be a range of enforcement tools and approaches for proactive use by monitoring and enforcement bodies (including sector-specific regulators) without the need for individuals to have to bring complaints or litigation. Second, there needs to be a low/no cost mechanism through which individuals can raise accessibility concerns to an enforcement body and seek resolution or redress, whilst retaining the option of taking the matter to court, eg by way of an action for breach of the EqA's anticipatory reasonable adjustment duty.

Enforcement powers are inextricably linked to remedies and sanctions. These should be oriented to achieving the aim of enhancing accessibility.[218] The Accessibility Ombud might, for instance, be granted the power to issue recommendations about accessibility changes that must be made to bodies that have breached accessibility obligations, giving them an appropriate period of time in which to act and guidance as to how to comply. Such recommendations will, however, be effective only if there are also powers to impose sanctions, sufficiently strong to be dissuasive, in the event of continued non-compliance.

5. *Conclusion*

Thirty years ago, when introducing the second reading of the Disability Discrimination Bill, William Hague MP said of its 'access provisions'

[218] See s 78 of the ACA, which states that 'The purpose of a penalty is to promote compliance with this Act and not to punish'.

that they were 'entirely new departures'[219] and would 'lead to a huge leap forward in the accessibility of goods and services to disabled people'.[220] He also observed that 'making services and facilities accessible to disabled people is pure good business sense'[221]; and that, as well as a change in attitude, 'what disabled people want is an increasingly accessible environment', adding that 'That is our objective in bringing forward the Bill and that is what it will provide.'[222]

It is now abundantly clear, however, that, despite some marked successes, our disability equality legislation is not capable of systematically delivering on such accessibility promises. The potential of proactive obligations, such as the anticipatory reasonable adjustment duty and the PSED, have been stifled by a range of factors rooted both in their statutory framing and in the systems through which they are enforced in practice, including the prohibitive financial risks associated with litigation. The range of proactive enforcement and associated powers granted to the EHRC have also been under-used, because of the multiple competing demands on that organization and its very much diminished funding model. The result is an enforcement model which depends very heavily on disabled individuals who encounter accessibility barriers, finding the time, energy, money and advice that bringing enforcement action necessarily entails.

Problems associated with relying on equality and human rights law to achieve accessibility are not unique to the UK. Beaudry, writing of the enforcement of accessibility claims through such law prior to the ACA, describes it as keeping 'disability justice partially hostage to chance',[223] in that it depends on the accident of 'whether a specific employer or service provider is "caught" by an individual complainant'.[224] Furthermore, he argues, that there is a 'privatization' of disability justice when 'the burden of creating more inclusive environments is placed on specific private actors who must accommodate [people] with disabilities up to a standard of "undue hardship"' under discrimination law'.[225] It is for these reasons that disabled people in Canada have campaigned for accessibility legislation that imposes systematic monitoring and proactive enforcement

[219] Hansard HC Debates, vol 253, 24 January 1995, at col 151.
[220] Ibid, at col 150.
[221] Ibid, at col 155.
[222] Ibid, at col 154.
[223] Beaudry, n 61, 20.
[224] Ibid, 19-20.
[225] Ibid, 19.

obligations on the state, thereby requiring it to demonstrate leadership in and take responsibility for shaping a more inclusive society.[226]

The accessibility-specific provisions of the EqA provide alternative approaches to accessibility regulation, in which enforcement is not always so heavily dependent on action by disabled individuals. These provisions are complex, somewhat fragmented, and rather obscurely located in the EqA and, certainly as regards the accessibility planning obligations on schools, the focus of serious implementation concerns. They nevertheless indicate that what should be more systemic, proactive forms of accessibility regulation are already at work in our law. We can build on them to construct clearer, more comprehensive, and more effectively monitored and enforced obligations to develop and implement accessibility plans and to comply with accessibility standards. Valuable lessons can also be learned from the relatively recent PSBAR and their particularly proactive model of monitoring and enforcement.

In March 2025, the House of Commons Transport Committee concluded that the current model of accessibility regulation is not working in the context of public transport.[227] It noted that operators and disabled people alike would benefit from a simpler, more consolidated approach[228] and stressed that accessibility must have a higher profile in policy-making and operational practice. It recommended that:

> The Department for Transport should lead a review of transport accessibility legislation in collaboration with the Office for Equality and Opportunity, and with meaningful involvement and leadership by disabled people, to assess how it could be streamlined, clarified and updated, and whether it should be underpinned by greater specification of the standards providers must work to. … The review should be completed within 12 months of the publication of this report.[229]

Welcome though this recommendation is, confining the focus of such a review to transport alone would be a missed opportunity. Accessibility legislation across all areas covered by the EqA is in need of urgent review. Furthermore, any such review should also address the very significant

[226] See eg David Lepofsky, 'What Should Canada's Promised New National Accessibility Law Include? A Discussion Paper' (2018) 38(1) NJCL 169; and David Lepofsky & Randal Graham, 'Universal Design in Legislation: Eliminating Barriers for People with Disabilities' (2009) 30:2 *Stat L* Rev 97.

[227] House of Commons Transport Committee, n 14.

[228] Ibid, para 114.

[229] Ibid, para 124.

gaps in current UK accessibility regulation—particularly as regards manufacturers.

To conclude, the answer to the question posed in the title is a resounding yes. It is indeed time for a UK Accessibility Act. For 30 years, UK governments have proclaimed their commitment to making the UK accessible, but our current legal and strategic frameworks are falling short. It is time for a stronger, simpler and more joined-up approach to accessibility regulation, in line with international human rights law. Ideas as to how a new model of accessibility regulation might take shape, informed particularly by recent initiatives in Canada and the EU, are presented in Section 4 above. They are intended as conversation openers, not constraints on debate, but it is now time for that conversation to begin so that the UK can get on with the important business of supplementing the EqA with a new and impactful UK Accessibility Act.