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Llywodraeth Cynulliad Cymru
Welsh Assembly Government

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Ann Jones AM
Chair of the Committee on Equality of Opportunity
National Assembly for Wales
Cardiff Bay
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Dear Ann

I am writing further to my letter of 27 July 2010 in response to the Equality of Opportunity Committee's inquiry into the accessibility of railway stations.

In my letter, I said that I would require future bidders for the Wales and Borders Train Franchise to improve the accessibility of railway stations. I also said that I would provide you with information about railway station accessibility (including g*randfather rights)* and how Wales compares to Scotland in relation to regulatory powers, and this information is set out below.

Railway station accessibility

At the outset, I wish to remind you that statutory responsibility and the funding for railway accessibility is a non-devolved area. However, the Welsh Assembly Government believes that investing in improved accessibility is the right thing to do where funding permits, and this is a high priority within the National Transport Plan for Wales.

The Department for Transport has provided information to my officials about the regulatory framework for accessible railway stations, and this is attached as an extract in Appendix 1. As you will note, there is reference to the term "when works takes place" which is of relevance to the Committee's question about *grandfather rights*.

The Office of Rail Regulation has confirmed that accessibility issues are a matter for the Department for Transport and that it has no regulatory powers in this area. However, it does have a role in authorising major works, which is essentially building a new station from scratch, where a station is on the Trans European Network (TEN).

Regulatory context in Scotland

The devolution of rail powers under the Railways Act 2005 transferred responsibility to Scottish Ministers to specify and fund rail services in Scotland . There are, however, still some areas that are reserved by the UK Government and this includes accessibility of railway stations.

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The Scottish Government is required to ensure any new stations are fully DDA compliant, under the requirement of "when work takes place".

The Scottish Government's letter also confirms that they require their franchise holder to undertake station accessibility improvements. This included a major obligation to install lifts at Haymarket Station, and a £250,000 annual investment in station accessibility improvements, with works to be approved by Transport Scotland.

The Scottish Government also states that the UK government has allocated £41m to Scotland from the "Access for All" fund, based on the Barnett formula allocation (10.14%). This is ring fenced Department for Transport funding that is secured until 2015. This is different from the application of "Access for All" to station improvements in Wales and Borders, where there is no specific ring-fenced allocation for Wales, but six Wales and Borders stations are being improved by Network Rail within the England and Wales "Access for All" programme.

I hope that this letter answers the Committee's request for additional information.

Yours sincerely

Ieuan Wyn Jones
Gweinidog dros yr Economi a Thrafnidiaeth
Minister for the Economy and Transport

Extract of Department for Transport Letter following Equality of Opportunity Committee Question about "Grandfather Rights"

Accessible railway stations: the Regulatory Framework

Summary

The Disability Discrimination Act (DDA) provides that operators must make "reasonable adjustments" to allow disabled people to access their facilities and services. These duties apply on an on-going basis and they apply to *existing and new* facilities and services. Operators are responsible for ensuring that the stations they operate satisfy the requirements of the DDA.

Licensed operators are also responsible for ensuring that they have due regard to the standards in the DfT document "Accessible Train and Station Design for Disabled People: A Code of Practice" *when works take place.* Even if the advice in this Code is followed, the onus remains on service providers to demonstrate, at any given time, that "reasonable" steps have been taken. Ultimately it is for the courts to interpret the law and decide on any individual cases brought under the DDA.

Detail – requirements of the DDA

It is unlawful for a transport provider to discriminate against someone:
• by refusing to provide any service to someone because their disability, which it provides (or is prepared to provide) to other members of the public.
• by offering a service at a lower standard.
• by offering a service on different terms.

If transport providers are found to be treating someone less favourably because of their disability, they are obliged by law to make 'reasonable adjustments' to their services, vehicles or infrastructure so that disabled people do not find them impossible or unreasonably difficult to use.

This duty is 'anticipatory': i.e. transport providers should expect that people with accessibility problems, such as disabled people, will use their services and should consider what reasonable adjustments might be needed, and put the necessary arrangements in place without waiting to be asked.

The duty to make reasonable adjustments is a series of duties which falls into three areas:

- practices, policies and procedures
- auxiliary aids and services; and
- physical features.

A transport provider is not required to take any steps which would fundamentally alter the nature of its service, operation, trade, profession or business or where a change may compromise someone's health or safety.

Where a 'physical feature' makes it impossible or unreasonably difficult for disabled people to make use of a service, a service provider must take reasonable steps to:

- remove the feature
- alter it so that it no longer has that effect
- provide a reasonable means of avoiding the feature; or
- provide a reasonable alternative method of making the service available to disabled people.

A 'physical feature' includes, for example, a feature arising from the design or construction of a building or the approach or access to premises.

The Act and Regulations do not require a service provider to adopt one way of meeting its obligations over another. The focus of the Act and Regulations is on results. Where there is a physical barrier, the service provider's aim should be to make its services accessible to disabled people and, in particular, to provide access to a service as close as it is reasonably possible to get to the standard normally offered to the public at large.

For example, a service provider may decide to provide a service through the option of an alternative method (e.g. a taxi to the nearest accessible station). If a disabled person were to bring a claim against the service provider for a failure to make reasonable adjustments, the court determining the claim will be able to consider the other options which the service provider could have adopted in making the service accessible.

It is in the interests of both service providers and disabled people to overcome physical features that prevent or limit disabled people from using the services that are offered. The Act does not place the different options for overcoming a physical feature explicitly in a hierarchy. However, when considering which option to adopt, service providers must balance and compare the alternatives in light of the policy of the Act, which is, so far as is reasonably practicable, to approximate the access enjoyed by disabled persons to that enjoyed by the rest of the public.

Therefore, it is recommended that:

- a service provider should first consider whether any physical features that create a barrier for disabled people can be removed or altered
- if that is not reasonable, a service provider should then consider providing a reasonable means of avoiding the physical feature
- If that is also not reasonable, the service provider should then consider providing a reasonable alternative method of making the service available to disabled people.

Later this year, the DDA will be replaced by the new Equality Act which aims to streamline previous, separate areas of legislation covering disability, gender, sexual orientation, and religion and belief. The Equality Act similarly requires service providers to make reasonable adjustments however the threshold is changed, so that disabled people are not at a *significant*

disadvantage when using their services. We do not currently anticipate that this will change the way in which railway undertakings provide their services to disabled customers.

Detail - Licence requirements to follow the Code of Practice

Under s.71B of the Railways Act 1993 the Secretary of State maintains a Code of Practice to protect the interests of disabled people travelling by rail. All passenger train and station operators are encouraged to use the document, and those who are licensed must have due regard to its standards. Accessible Train and Station Design for Disabled People: A Code of Practice, published in July 2008, replaced the previous version published by the Strategic Rail Authority, and incorporates a clearer structure, more-up-to-date guidance, and standards mirroring new European rules.

The underlying principle of the Code is that, *whenever works takes place*, the opportunity is taken to ensure that the output of that particular work provides for improved accessibility. The standards in the Code are obligatory whenever licensed operators install, renew or replace infrastructure or facilities. They do not apply retrospectively to existing infrastructure which is not the subject of these works.

Even if the advice in the Code is followed, the onus remains on service providers to demonstrate, at any given time, that "reasonable" steps have been taken. Ultimately it is for the courts to interpret the law and decide on any individual cases brought under the DDA. Where, for example, it may be impossible or unreasonably difficult for disabled people to use the means of access to a station, it would then be up to the service provider to show what reasonable steps had been taken to address these difficulties, including any reasonable alternative means of making the service available to disabled people.