

PE1792/A

Scottish Government submission of 27 July 2020

Thank you for your email of 1 June 2020 in connection with Petition PE1792 which calls on the Scottish Parliament to urge the Scottish Government to ensure that local authorities and service providers provide access for those with disabilities at public facilities such as piers and harbours:

www.parliament.scot/GettingInvolved/Petitions/PE01792

The committee has asked that the Scottish Government provide its views. Our views are set out as follows.

The Scottish Government's vision is that all disabled people can travel with the same freedom, choice, dignity and opportunity as other citizens. We believe in the absolute rights of disabled people to participate as full and equal citizens; we know that accessible travel is key to enabling this. Scotland's Accessible Travel Framework is about improving the journeys that disabled people make whilst working to remove the barriers which prevent them travelling:

www.transport.gov.scot/publication/going-further-scotland-s-accessible-travel-framework/

The Framework has been shaped by disabled people themselves, together with organisations that represent them. This ensures the experiences and voices of disabled people are heard.

Organisations not specifically listed under Schedule 19 of the Equality Act 2010 may be subject to the general duty to eliminate discrimination, advance equality of opportunity and foster good relations contained in section 149(1) of the 2010 Act if they fulfil a public function:

www.legislation.gov.uk/ukpga/2010/15/section/149

The Equality and Human Rights Commission has produced the *Services, Public Functions and Associations Statutory Code of Practice*:

www.equalityhumanrights.com/en/publication-download/services-public-functions-and-associations-statutory-code-practice

With Chapter 11 (at paragraph 11.7) suggesting that:

Whether or not an activity is a service to the public, or a public function, will depend on all the circumstances of the case. Many of the activities that a public authority carries out are services to the public – for example, the provision of social care, library or leisure services. Activities such as these will be subject to the provisions of the Act relating to the provision of a service to the public.

It could be argued that a port carries out a public function; however, it would not be for the Scottish Government to opine and each case would need to be decided on its merits. Scottish ports operate in a commercial environment usually with no direct public funding, with trust, private and local authority ports competing in the market. All ports on which the Scottish Parliament has devolved statutory powers and duties in the public interest should be accountable for their use. It is not possible for the Scottish Government to dictate how any commercial company is run, nor interfere with its business decisions on how to best utilise its resources.

In relation to disabled people, the Equality Act 2010, Part 2 Chapter 2, requires service providers to make reasonable adjustments in circumstances where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people.

www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/2/crossheading/adjustments-for-disabled-persons

That requirement covers changing the way things are done; making changes to the built environment; and providing auxiliary aids and services. The Equality and Human Rights Commission has produced a Code of Practice that gives more information on the application of reasonable adjustments:

www.equalityhumanrights.com/en/multipage-guide/reasonable-adjustments-practice

However, responsibility for complying with the requirements of the Equality Act 2010 rests with individual organisations. Responsibility for oversight of compliance with the 2010 Act rests with the Equality and Human Rights Commission. The Commission is independent and cannot be directed by Scottish Ministers. Private individuals may also seek to enforce their rights under the Equality Act in courts and tribunals.