

PE1792/B

The Highland Council submission of 29 September 2020

Thank you for your letter dated 1st September regarding a petition PE1792 received from Thomas Butler. The Highland Council's Chief Executive is now Donna Manson, and she has asked me to respond on her behalf.

Regarding the information sought in your letter – I provide the following in response to the issues raised: -

The action called for in the petition, given that The Highland Council owns the port in question and so are responsible for access to it under the Equality Act 2010 regarding access to piers and harbours.

The main UK legislation that applies to public transport and disabled people is consolidated in the Equality Act 2010, but much of the law as it relates to the treatment of disabled passengers and the services they can expect derives from various EU legislative instruments.

The Equality Act 2010 (the Act) provides a broad legal framework covering discrimination against people with specific 'protected characteristics' including that of disability.

The Act also places a positive duty on service providers and those exercising public functions to make reasonable adjustments for disabled people. This requires those subject to the duty to remove or change physical features, provisions, criteria or practices which would put a disabled person at a substantial disadvantage in comparison with a person who is not disabled when accessing services and facilities.

In addition, the Public Sector Equality Duty, is aimed at ensuring that the needs of all people with protected characteristics are fully considered as part of policy development and delivery, including transport provisions.

Part 3 of the Act provides protection from unlawful discrimination in the provision of services and exercise of public functions. This applies to the transport infrastructure and means that providers have a duty to avoid discrimination in respect of matters such as timetables, booking facilities and other services at ports and ferry terminals, stations and airports, and also the use of certain specified vehicles (including trains coaches and taxis) but does not extend to transport by sea or air.

However, protection from discrimination for disabled passengers travelling by sea has increased by bringing into force the [EU Regulation No. 1177/2010](#) through the [Merchant Shipping \(Passengers' Rights\) Regulations 2013](#) and subsequent amendments.

The Regulation aims to provide disabled persons and persons with reduced mobility (PRMs) with the same opportunities to travel by ferry and cruise ship as they have in other transport sectors across the EU. It applies to:

- passengers travelling on a ferry departing from, or arriving in, the UK or any other EU Member State, or who have booked and paid for such a journey; and
- passengers travelling or booked on a cruise ship departing from the UK or any other EU Member State.

The regulations shall not apply to passenger vessels which carry up to 12 passengers or have a crew of 3 or less. It also does not apply where the journey is 500 metres or less or on excursion or sightseeing tours.

Additionally, the maritime regulations include two exemptions to the right to non-discrimination. This means that carriers, travel agents and tour operators may be allowed to discriminate:

- if they can show this is necessary to meet applicable safety requirements, or
- where the design of the ship or infrastructure of the port makes it impossible to uphold the right to non-discrimination in a safe or operationally feasible manner.

When deciding on the design of new ports and terminals, and as part of major refurbishments, the bodies responsible for those facilities should take into account the needs of disabled people, in particular with regard to accessibility, paying particular consideration to 'design for all' requirements (EU1177/2010).

Current regulations make clear that operators should give thought to what changes they can make or processes they can adopt to assist disabled passengers at all points of their journey, including the design of new ports and terminals or major refurbishments to consider the accessibility needs of passengers with disabilities and reduced mobility, and to design facilities that can be used by all passengers. There is, however, no need to retrofit. This means that while port and vessel operators must consider the needs of disabled passengers when building new infrastructure or carrying out a major refurbishment, they do not need to make existing facilities comply with regulation where this would require modification or replace ships, infrastructure, ports or port terminals.

Access for those with disabilities to both the pier/ harbour and the adjacent waters via the pier/ harbour, as the petition alludes to both, given the need for water activities as well as pier/ harbour access.

Following the decision by the Scottish Government to provide a larger vessel for the Uig/Tarbert/Lochmaddy Triangle lifeline ferry service to the Western Isles, The Highland Council has been working in conjunction with Caledonian Maritime Assets Ltd (CMAL), Transport Scotland, Caledonian Ferries Ltd (CFL) and the Comhairle nan Eilean Siar towards redeveloping the three ports which include Uig to accommodate the larger vessel and the additional passenger and vehicle traffic which will result.

The works proposed at Uig for the Transport Scotland funded project, are car marshaling and parking, new terminal building, widened approachway, dredging, new solid pier extension including a roundhead, fendering, replacement linkspan and LNG infrastructure.

In respect of ferry travel, as can be seen the regulations above apply and the design of the infrastructure at Uig have been agreed with CFL and CMAL including access for passengers - these designs have been considered and consulted upon, specifically including members of the local access panels served by the Uig ferry.

The works at Uig include the widening of the approachway, which impacts on existing berthage and also the existing small boat access steps, it is therefore part of the project to replace the berthage and small boat access.

The issue of small boat access was raised during the extensive consultations, and consideration was given to provision of a floating pontoon arrangement with hinged access, and technical reports were commissioned and shared with the communities.

The pontoon/hinged walkways pose two significant issues. The location at Uig is exposed and concerns were raised during the technical evaluation about the long term durability of a floating system. The other aspect was that to provide disabled access ramps due to the tidal range – meant that the floating structure and associated ramps were of significant length. Berthage usage at Uig is significant due to fishing aquaculture, pleasure and marine tourism. The floating system would reduce the provision of berthage, where existing berthage space is at a premium. It is noted that such a provision would also be costly to install and maintain and the installation of a pontoon for disabled accessibility to small boats would require additional investment as it would be considered as non-ferry infrastructure.

As stated above the maritime legislation shall not apply for passengers of sightseeing or excursions and notwithstanding this, exemptions exist where it is deemed impossible to uphold the right to non-discrimination in a safe or operationally feasible manner.

Noting the significant consultation and consideration of these matters, designs have been developed for the replacement steps taking cognisance of the range of vessels and usage to provide additional landings, and fendering arrangements to improve access provision and safety.

Construction consents have been progressed based on the designs as described above through a Harbour Revision Order – this order was duly published and included a period of representation. No sustained objections were received, and no representations were made about the design of the infrastructure or boat access.

The Harbour Revision Order was duly made – and is now in force.

It was agreed that consideration of the issues and potential solutions should be investigated further with the community and harbour users, and it was planned to hold additional consultation and also conduct trial use for disabled access over the link span, which The Highland Council have confirmed could be a potential solution at some tide levels where access to small vessels could be provided outwith ferry operations. This consultation process was disrupted by the Covid Pandemic but will be progressed when circumstances permit.

Whether an Equality Impact Assessment has been conducted re accessibility to both pier/ harbour and the adjacent waters, given that The Highland Council plans infrastructure change; and if so, the conclusions drawn from that EIA relevant to the access issues in this petition.

Consideration of equalities issues and compliance with legislation has been followed, and a formal EQIA will be produced on conclusion of the design process, that can only be completed following the above disabled access consultations that have been interrupted by the Covid Pandemic.

It is clear that until these consultations are concluded the issue of disabled access to small boats remains a live issue.

Works at Uig have been paused, and construction works will not commence before Summer Autumn of 2021, so there remains the time and opportunity to conclude consultations, and allow completion of the EQIA.