4 March 2008

Dear Convenor

Equal Opportunities Committee – Disability Inquiry

Thank you for inviting me to give evidence to the Committee in relation to progress in implementing those disability inquiry recommendations which fall within my portfolio. I understand that, given the number of recommendations, the Committee would find it helpful to receive a written update on those which relate to physical access. This is attached in Annex A.

I look forward to my discussion with the Committee on 11 March.

JOHN SWINNEY
Recommendation No 140

However, the Committee recommends that, once the new regulations come into force, the impact of the increased requirements be closely monitored, with the involvement of disabled people, to assess the extent to which the regulations bring about increased accessibility.

Update on progress

Initial discussions have begun with stakeholders through a number of disability and related organisations (larger organisations & consortia such as: Equality & Human Rights Commission; Inclusion Scotland; Scottish Disability Equality Forum; Disability Agenda Scotland; and a number of smaller organisations).

At this stage, it may be too early to gauge the effects of the new standards as building designed to those standards are only now appearing. However, the intent is not only to start to assess how changes are being felt but to improve links with such organisations and foster better continuous low-level engagement. Such dialogue will better enable us all to be aware of each other’s issues, concerns and activities and ensure greater involvement of these organisations and the interests they represent at policy development stage. This assists in achieving one key intent of the Disability Equality Duty, introduced under the DDA 2005.

Previous Responses regarding the Recommendation

There is a duty to monitor the effectiveness of any change made through legislation and the Scottish Building Standards Agency (SBSA) has procedures for such monitoring. A component of any such exercise must be feedback from the building users most affected by changes. The SBSA is considering how best to monitor the revised standards on accessibility and will be discussing with stakeholders methods for improving the process. This will include discussion with a range of disability organisations.
Recommendation No 141

In addition, the Committee recommends that the Scottish Executive, together with the various professional disciplines involved in the development, construction and management of the built environment, encourage developers to exceed minimum requirements in relation to accessibility.

Update on progress

The Scottish Building Standards Agency continues to offer information on further sources of recognised good practice which may assist developers exceed the mandatory requirements of building standards. In partnership with stakeholders, the Agency will periodically review standards relating to access and usability of buildings to ensure these remain fit for purpose. The latter will be assisted by the activities outlined in the notes on recommendation 140.

The SBSA is also involved in the continued development of current good practice documents through the British Standards committee that produces publications such as BS 8300 - 'Design of buildings and their approaches to meet the needs of disabled people - Code of practice'.

Previous Responses regarding the Recommendation

Minimum requirements are set out in legislation. The professional disciplines involved in the development, construction and management of the built environment will need to consider whether they wish to exceed minimum requirements.

The Scottish Executive takes steps to ensure that those involved in the development, construction and management of the built environment are aware of minimum requirements in relation to accessibility and know where to go for further advice. Current activity includes:

Advisory text within the SBSA Technical Handbooks directs those involved in development to further reading and to resources providing information on additional good practice issues. It is important that those involved in development are made aware of this information and of responsibilities under other, related, legislation such as the Disability Discrimination Act. Production of additional advisory documents such as the joint SE Planning/ SBSA publication Planning Advice Note (PAN) 78: Inclusive Design which proposes effective joint working to ensure that developments provide the most appropriate environments for all users.
Recommendation No 142

The Committee notes that the Minister pointed out that access statements [those provided by the Planning etc. (Scotland) Bill] would be required for ‘a broad range' of applications and the Committee recommends that all planning applications for, at the very least, public buildings be required to be accompanied by an access statement outlining how access will be maximised for disabled people.

Update on progress

In January 2008 the Government published its proposals for those planning applications which would be required to be accompanied by a design and / or access statement plus the form and content of any such statement. These statements form part of the wider workstream of modernising the planning system. The formal public consultation will close in early April 2008.

Previous Responses regarding the Recommendation

The Planning etc. (Scotland) Act 2006 provides Ministers with enabling powers to require either or both design and access statements to accompany specified planning applications.

In advance of laying before Parliament the necessary secondary legislation, the Executive will bring forward its proposals for consultation, which will include the type of development that will be subject to the requirement to provide an access statement. In coming to a view on its proposals, the Executive will consider the Committee’s recommendation.
Recommendation No 143

The Committee further recommends that a report on the issues discussed in the access statement should be required on completion of the relevant building, showing the extent to which the access statement has actually been complied with. The Committee considers that access panels might usefully have a role to play in this process.

Update on progress

We remain of the view that it will be for the planning authority to consider the information contained in the statement when coming to a view on individual planning applications. The planning authority’s view on the application will be set out in the decision notice which will set out the terms of the decision, any associated conditions and the reasons for such a decision.

Based on the above decision, it will also remain for the planning authority to consider whether any enforcement action is commensurate with any breach of planning controls due to non-compliance with the decision. The model Enforcement Charter published last year recognises the role that the public can play in bringing such breaches to the attention of the planning authority.

Proposals contained in the consultation draft development management regulations will require planning authorities to prepare a report of the handling of an application and for this report to be available to the public through the planning register. We are proposing that an element of the report will be to indicate whether such a statement was submitted and what were the main issues raised by the statement.

Previous Responses regarding the Recommendation

There is no legislative provision requiring a developer to prepare a report on completion of a project.

However, when coming to a view on a planning application and on any conditions to be attached to the permission, we currently envisage that the access statement would be a material consideration alongside development plan policies and other relevant matters. We would see that it is for the planning authority to consider what, if any, enforcement action would be required should there subsequently be a breach of planning control such as non-compliance with any conditions.
Recommendation 146

The Committee recommends that the Scottish Executive, in conjunction with the Convention of Scottish Local Authorities, encourage and support local authorities to develop effective working relationships with their local access panels and consider how the work of access panels can be effectively promoted.

Update on Progress

Planning Advice Note 78 recognises that access panels are a useful source to consult on design, as they are able to give advice based on personal experience and local knowledge. However, it also recognises that access panels work in different ways and have different levels of experience and technical expertise. Currently such panels do not cover all areas of Scotland.

With regard to their future potential role in issues around design and access, the Government’s consultation paper on changes in development management recognises that there are questions as to how such voluntary panels can be utilised so as to ensure that the best and most efficient use of this resource is made. It suggests that it may be appropriate for authorities to engage with access panels and similar stakeholder groups in the preparation of policies on access in the local development plan. The Government is particularly seeking the views of members of access panels and planning authorities on the potential role that panels can play in providing advice and expertise on design and access issues for individual planning applications. It is hoped that dialogue between a planning authority and local access panel will increase the understanding of the roles, resources and procedures of each party. We await the responses to the consultation paper with interest.

As the umbrella body for access panels in Scotland, the Scottish Disability Equality Forum also has a role in supporting and developing the access panel network. The Government has provided further grant funding to SDEF currently for 2007-2010 to help to facilitate this.

Previous Responses regarding the Recommendation

It will be for local authorities themselves to determine how they work with the access panel(s) in their area. However, the Scottish Executive is keen to promote the work of access panels and we will work with the Convention of Scottish Local Authorities to consider how best this can be achieved.
Recommendation No 148

The Committee, therefore, recommends that the Scottish Executive continue to encourage effective understanding and dialogue in relation to accessibility issues between the various professional disciplines involved in the development, construction and management of the built environment both through the publication of relevant guidance and through the organisation of meetings and seminars.

Update on progress

As part of the Government agenda for simplifying the public sector landscape, the First Minister recently announced that the Architectural Policy Unit was moving from its current home in the Directorate for Europe, External Affairs and Culture to join with Building Standards and Planning in a new Directorate for the Built Environment. It is believed that these changes will allow for the development and strengthening of the clear synergies and linkages between various elements of the work streams on architectural policy, building standards and planning within a clear organisational framework.

The Scottish Government will continue with projects such as the previous PAN 78 on ‘Inclusive Design’ to promote greater understanding of the need for inclusive environments.

Promotion of an understanding of the building standards system and its provisions form part of the duties of the SBSA. For last year’s changes to the Technical Handbooks, the Agency carried out a series of 30 presentations, both in Livingston and across Scotland, to over 2,000 designers, verifiers and other interested parties. The Agency receives enquiries on a daily basis and offers advice on the intent of building standards, including accessibility issues, and on related topics.

Previous Responses regarding the Recommendation

The Executive wishes to promote understanding and dialogue in relation to accessibility issues. Action in this area includes the publication of Planning Advice Note 78: Inclusive Design which recognises that local authorities perform an important role through their wide variety of statutory functions encompassing transport, planning, development management and listed building consents, road construction consent and building warrants but that the creation of an inclusive environment involves contributions from a range of practitioners including architects, urban designers, engineers, access consultants, facilities managers, the occupier and end users. This document was a joint publication between the Scottish Executive Planning Division and the Scottish Building Standards Agency and sought to promote effective dialogue and understanding, particularly between the planning and building standards professions. All parties above have a part to play in ensuring that developments are designed, built and operated in line with inclusive principles.
Similarly, the SBSA will continue to promote awareness of building standards and changes to regulation or new publications when they occur and encourage a more inclusive approach to design and construction.

We will consider what scope there is for further activity to promote understanding and dialogue between disciplines in relation to accessibility issues.
Recommendation No 149

The Committee further recommends that the Scottish Executive, in conjunction with the Convention of Scottish Local Authorities, encourage more effective communication between relevant professionals at local authority level as well as mechanisms for the sharing of good practice across the country.

Update on progress

As identified in the original response to the EOC report, the SBSA and colleagues within the Scottish Government continue to examine how further good practice documents might be produced, to support partners and stakeholders in delivery of more inclusive, more sustainable environments and how dialogue across Scotland can be encouraged.

Previous Responses regarding the Recommendation

The Executive maintains a good working relationship with local authorities on the topic of the built environment. Both Planning and Building Standards functions engage with all 32 local authorities: the Executive’s Planning Division through bi-annual meetings with the Heads of all Planning Departments; the SBSA through the Scottish Association of Building Standards Managers and the Building Standards Forum as well as through meetings, presentations and written and telephone communications.

In addition, the Executive is looking to share good practice. Designing Places stresses the importance of design training. To help improve design skills within Scottish planning authorities, the Executive and Architecture and Design Scotland have created a design training framework which covers the following key subject areas: design principles, design policies, master planning, design statements, design review, design at appeal and a range of specific topics, such as inclusive design. Funding for this training will be provided by the Executives Planning Development Programme.
Recommendation No 150

The Committee recommends that the Scottish Executive establish a national accessible design award scheme and encourage and support local authorities to establish local schemes within their areas with the involvement of disabled people.

Update on progress

Architecture and Design Scotland (A+DS) has sought to promote best practice in accessibility through its Design Review function, and in all its work related to the creation of well designed buildings and places.

A+DS has, for instance, in discussion with the 2014 Bid team, urged that the opportunity offered by the Commonwealth Games to make appropriate access adjustments to existing facilities, should not be missed. A+DS considers that one of the great strengths of the Glasgow bid has been its use of its existing infrastructure and large sporting facilities, and there is sufficient time for any alterations being considered to include best practice access arrangements for all those participating in, or visiting the 2014 related events.

Previous Responses regarding the Recommendation

‘Building our Legacy’, the new statement on architecture policy was published on 20 February. It emphasises the vital importance of sustainable, accessible and inclusive design as one of the five overarching themes of policy. The statement highlights the relevance of PAN 78 on Inclusive Design and encourages a wider awareness of inclusive issues. We will require our advisory NDPB, Architecture and Design Scotland, to do likewise and to share and disseminate good practice on inclusive design. We believe that inclusive, accessible design is a key part of sustainable development – buildings and places have to be inclusive and adaptable to meet future needs effectively.

We are not, however, likely to take up the recommendation to create a new award for accessible design - we already support the annual RIAS Doolan Award for Scotland’s best building, and take the view that another award in a very busy field would not represent the best use of resources. We consider that using resources to encourage clients/developers and all those involved in the built environment to act upon PAN 78 as well as identifying and disseminating good practice through organisations such as Architecture and Design Scotland would be more effective.

In addition, in collaboration with the Royal Town Planning Institute in Scotland, the Scottish Executive promotes design through the annual Scottish Awards for Quality in Planning with one of the categories being design on the ground.
Recommendation No 155

The Committee recommends that work be taken forward by the Scottish Executive, the Disability Rights Commission, the Convention of Scottish Local Authorities and other relevant parties, including disabled people, aimed at achieving consistency of policies and standards on inclusive design and access improvements to historic buildings across local authorities in Scotland.

Update on progress

The Scottish Government and its Agencies continue to work to improve consistency in this area. Our original response highlighted a number of initiatives including joint research by Historic Scotland and the Disability Rights Commission looking at the planning and listed building consent application process concerning accessibility improvements to historic buildings and the role of local authorities.

The SBSA has collaborated with Historic Scotland on their ‘Guide to the Conversion of Traditional Buildings’ which offer an alternate approach to the guidance within the SBSA Technical Handbooks. This offers a means of investigating solutions that are appropriate to a building conservation or historical context.

Previous Responses regarding the Recommendation

The Scottish Executive and its Agencies continue to work to improve consistency in this area. Recent initiatives include:

Joint research by Historic Scotland and the Disability Rights Commission looking at the planning and listed building consent application process concerning accessibility improvements to historic buildings and the role of local authorities. The research, which examined three local authorities, was completed in March 2006. The research findings refuted anecdotal evidence that the listed status of historic buildings was being used by service providers as a way of avoiding their obligation to make reasonable adjustments under the terms of the Disability Discrimination Act 1995. Of the planning and listed building consent applications reviewed, only a small proportion were withdrawn or refused. The research found that of the applications refused, in most instances it was possible to amend the design to provide improved access.

The Annex to Planning Advice Note 78 provides an introduction to the information and resources that are available to all parties involved in developing the built environment with a particular emphasis on inclusive design. However, we recognise that additional guidance / advice will be required once access statements become a requirement for specified planning applications and we will provide appropriate guidance, following consultation, to local authorities, developers etc.
We will consider what further scope there may be to work with CoSLA and the DRC to promote work in this area.
Recommendation No 156

The Committee further recommends that the Scottish Executive, the Convention of Scottish Local Authorities, the Disability Rights Commission, Historic Scotland and other relevant parties work together to collate and disseminate suitable guidance from across the UK to assist in the process of ensuring effective accessibility adaptations.

Update on progress

Historic Scotland continues to work with Scottish Local Authorities, the former Disability Rights Commission and other relevant parties to develop suitable guidance to assist in progressing the effective accessibility of individuals to its buildings and monuments whilst balancing the delivery of a sustainable work plan. The agency is currently developing its Equality Operational Policy and will seek to actively involve disabled people in the development of the policy and the resultant guidance.

Building standards, particularly those for housing, promote a more inclusive approach to design, requiring designers to not only deliver buildings that are more accessible but also consider issues that better enable simple and inexpensive adaptation. They also continue to identify sources of further good practice guidance.

Previous Responses regarding the Recommendation

The Executive recognises the benefits from having such advice freely available as, without the necessary information, it is far more difficult to adopt and follow good practice. The document, PAN 78, cited earlier, also offers a starting point for further discussion and development.

Building standards already do this for particular aspects of the built environment. UK guidance on accessibility that is relevant to matters subject to building regulations is either incorporated within building standards guidance or reference is made to it as a source of further good practice. Building standards also cite other relevant legislation including, for non-domestic buildings, the Disability Discrimination Act and the DRC Codes of Practice.

Work by Historic Scotland has included a survey of disability in Scotland in order to map out the extent and nature of disabilities in Scotland and produce a gazetteer of key organisations in order to assist its work in this area.

Historic Scotland has also provided funding towards the publication of “Easy Access to Historic Landscapes” which is aimed at helping managers and owners make their historic landscapes more accessible. This document was produced by English Heritage and the Heritage Lottery Fund in 2005.
We will consider what scope there may be for all parties to work together to promote further work in this area.