



# Non-domestic TV channels: proposals to modify access service obligations

Consultation

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## About this document

This document invites views on:

- (a) proposals to bring signing arrangements for channels licensed by Ofcom for transmission to other Member States of the European Union (EU) (which we refer to as non-domestic channels) into line with the arrangements applying to domestic channels transmitting within the UK;
- (b) which would be the most appropriate form(s) of assistance for deaf sign language users in different European countries to help them to understand and enjoy programmes included in non-domestic television services; and
- (c) proposals to require from 1 January 2017 the provision of access services (including subtitling, signing and audio description) by non-domestic channels serving those member states of the European Economic Area (EEA) to which the European Union's Audiovisual Media Services (AVMS) Directive now applies (i.e. Iceland, Liechtenstein and Norway).

A plain English summary of this document is provided in Annex 2, and a translation of Annex 2 in International Sign is available at the following link: <https://vimeo.com/143986162>.

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## Section 1

# Summary

## Background

- 1.1 Ofcom has required broadcasters of qualifying domestic channels to provide access services since 2005, and qualifying<sup>1</sup> non-domestic channels since 2014. Consistent with European and UK law, the access service arrangements for non-domestic channels are broadly the same as for domestic channels. Briefly, all channels – domestic or non-domestic - are required to meet targets for subtitling, audio description and signing targets. These rise over time to 80%, 10% and 5%. More detail is given in Section 2.
- 1.2 However, qualifying channels with smaller audiences<sup>2</sup> - both domestic and non-domestic - are excluded from the 5% signing target, and instead required to provide a smaller amount of sign-presented programming, or contribute to alternative arrangements that would secure the provision of sign-presented programming in other ways.
- 1.3 There are currently some differences between the signing arrangements for domestic and non-domestic channels with smaller audiences:
  - a) for a transitional period of two years ending on 31 December 2015, non-domestic channels are allowed to provide additional subtitling in lieu of these obligations. The purpose of the transitional period was to allow Ofcom to seek the views of sign language users and broadcasters on what arrangements would be most beneficial to sign language users;
  - b) from 1 January 2016, domestic channels will be required either to meet targets for sign-presented programming that will rise over time, or to contribute rising amounts to alternative arrangements.

## Ofcom's proposals

- 1.4 Section 3 explains Ofcom's proposals that the transitional period should be extended by 12 months to allow time for broadcasters to give effect to Ofcom's decisions on signing arrangements.
- 1.5 Section 4 explains Ofcom proposals that, like domestic channels, qualifying non-domestic channels should be required either to meet targets for sign-presented programming that will rise over time, or to contribute rising amounts to alternative arrangements, as shown in rows 1 and 4 respectively of the table at Figure 1 below.
- 1.6 Section 4 also explains that if Ofcom is satisfied that sign language users in other European countries would prefer another form of assistance instead of sign-

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<sup>1</sup> Only channels meeting the audience share and affordability tests qualify set out in the Code on Television Access Services ('the Code') are qualifying channels (see <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tv-access-services-2015.pdf>)

<sup>2</sup> Channels with smaller audiences are those with an audience share higher than the audience share threshold and below the signing threshold. The relevant thresholds for different countries are set out in Annex 2 to the Code.

presented programming, it will consider substituting other obligations, such as targets for extra subtitling or sign-interpreted programmes. Ofcom also proposes that, consistent with the arrangements for domestic channels, the amount of assistance for sign language users should rise over time, and broadcasters wishing to propose alternative arrangements should make contributions that will rise over time. Rows 2 and 3 of the table at Figure 1 show the targets Ofcom would envisage for extra subtitling or sign-interpreted programmes. Row 4 shows how much contributions to alternative arrangements would rise over time.

**Figure 1: Levels of proposed requirements, substitute requirements, and contributions to alternative arrangements for channels with smaller audiences**

		Signing (from anniversary of notice date)	1 <sup>st</sup> to 2 <sup>nd</sup>	3 <sup>rd</sup> to 4 <sup>th</sup>	5 <sup>th</sup> to 6 <sup>th</sup>	7 <sup>th</sup> to 9 <sup>th</sup>	10 <sup>th</sup> onwards
1	Proposed requirements (s303(10)(c) of the Act)	Sign-presentation	30' x 12 (30' a month)	30' x 12	45' x 12	60' x 12	75' x 12
2	Substitute requirements	Sign-interpretation	1% of output	2%	3%	4%	5%
3		Extra subtitling	5%	5%	7.5%	10%	12.5%
4	Alternative arrangements	Minimum contributions to alternative arrangements*	£24.5k	£24.5k	£36.8k	£49.1k	£61.4k

\* 2014 prices, subject to annual adjustment in line with CPI

1.7 Section 5 explains that in 2013, relevant European law was extended to apply to three non-Member States – Norway, Iceland and Lichtenstein. As a result, qualifying non-domestic channels broadcast to these countries are obliged to provide access services in the same way as other Ofcom-licensed channels. To allow broadcasters a reasonable amount of time to prepare, the document proposes that access service obligations should apply to qualifying channels (likely to be only channels serving Norway) from 1 January 2017.

1.8 Ofcom seeks views on these issues by **5pm on 16 December 2015**.

## Next steps

1.9 Ofcom will consider all representations carefully, and expects to publish its final decisions on whether to extend the transitional period for one year by the end of 2015, and on the remaining issues in early 2016.

1.10 When considering the views of sign language users, we will attach due weight to the views expressed by national deaf groups that are members of the European Union of the Deaf (EUD). The EUD is a federation of national groups representing sign language users, rather than those with hearing impairments who do not use sign

language. Ofcom understands that these groups have a good understanding of the needs of deaf sign language users, and are well placed to represent the balance of opinion amongst them.

- 1.11 Ofcom has said that it intends to carry out a review in 2019 of how the arrangements for domestic channels are working, and whether regulation is delivering the expected benefits to sign language users, and whether, as anticipated, the costs to most broadcasters remain a very small proportion of relevant turnover. Subject to the outcome of this consultation, Ofcom proposes to carry out a similar review of the arrangements for non-domestic channels at the same time.

## **This document**

- 1.12 Ofcom recognises that this document may be difficult to read for many sign language users. In addition to the plain English summary at Annex 2, Ofcom has briefed EUD member groups, and prepared a translation of this summary in International Sign. It will offer further briefings to national deaf groups that are members of the EUD on request.
- 1.13 The document is also available on Ofcom's website in a version (Portable Document Format) which is compatible with most screen-readers.

## Section 2

# Background

## Introduction

- 2.1 Ofcom licenses and regulates several hundred channels that broadcast television services to locations outside the UK, principally in Europe. Many are operated by large multi-national broadcasters such as SBS Discovery, Turner Broadcasting, MTG and Disney. A number of these channels are pan-European, showing identical content in all countries, but subtitled or dubbed as appropriate to meet the needs of different language markets. While all contribute to widening the choice of TV for consumers across Europe, many have relatively small audiences.
- 2.2 As background to this consultation, this section:
- a) explains the two main approaches to signing on TV;
  - b) summarises the relevant UK statutory provisions and the application of European law;
  - c) explains how Ofcom currently regulates signing for domestic channels;
  - d) summarises the introduction of access service obligations for non-domestic channels; and
  - e) summarises the application of the AVMS Directive to certain EEA countries.

## Signing on TV

- 2.3 There are two main approaches to signing for audio-visual content:
- a) sign-interpreted programmes are those originally produced without signing, on which a signer has been superimposed, usually in the corner of the screen. In a number of EU Member States, this is used to provide sign language users with access to some news bulletins; and
  - b) sign-presented programmes are those presented in sign language, sometimes dubbed in the main oral language and accompanied by subtitles. Examples include the BBC's *See Hear*, Bayerisches Fernsehen's *Sehen statt Hören*<sup>3</sup> and *Tidens Tegn* from the Danish film maker Døvefilm<sup>4</sup>.
- 2.4 In addition, many sign language users also watch subtitled TV programmes. However, in many cases the written language is a second language for deaf people, who may therefore find it difficult to follow subtitled programmes.

## UK statutory provisions

- 2.5 Sections 303 to 308 of the Communications Act 2003 ("the Act") provide that Ofcom must draw up and from time to time review and revise a code giving guidance as to

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<sup>3</sup> see: <http://www.br.de/fernsehen/bayerisches-fernsehen/sendungen/sehen-statt-hoeren/index.html>

<sup>4</sup> see: <http://www.deaftv.dk/>

how applicable television services should promote the understanding and enjoyment of television by people who are deaf or hard of hearing, blind or partially-sighted, or who have a dual sensory impairment (deafblind).

- 2.6 The Act prescribes quotas for the subtitling (80%), signing (5%) and audio description (10%) of programmes to be reached by the tenth anniversary of the relevant date for each channel, as well as a subtitling quota to be reached by the fifth anniversary (60%).
- 2.7 The Act allows Ofcom to take into account a number of factors in deciding whether particular programmes or entire television programme services should be excluded for the purposes of access service quotas. These factors include ‘the extent to which members of the intended audience for the programmes [included in a television programme service] are resident in places outside of the United Kingdom’, and ‘the technical difficulty of providing the assistance’<sup>5</sup>.
- 2.8 Initially, this access service scheme was applied to domestic channels only. There were no requirements in European legislation for access services, and the means to deliver or receive access services did not exist in all Member States. However, access services are now available in many European countries, and the legislative position changed with the adoption by the European Union of the Audiovisual Media Service (AVMS) Directive<sup>6</sup>, which requires all broadcasters (whether domestic or non-domestic) within the jurisdiction of a Member State to be regulated according to the same system of laws.
- 2.9 Section 3(3)(a) of the Act also requires Ofcom to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.

## Application of European law

- 2.10 Article 7 of the AVMS Directive requires that ‘Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability’.
- 2.11 Article 2(1) of the Directive requires that ‘Each Member State shall ensure that all audiovisual media services transmitted by media service providers under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State’.
- 2.12 As Ofcom explained in the 2012 Statement<sup>7</sup>, we remain of the view that we are “bound by the AVMS Directive to ensure that all television services licensed by Ofcom and intended for reception in one or more Member States of the European Union comply with United Kingdom legislation and in particular the Communications Act 2003 and the regulatory obligations imposed on providers under that legislation. Accordingly, in relation to television access services, sections 303 to 308 of the

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<sup>5</sup> Section 303(8) of the Communications Act 2003.

<sup>6</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:en:PDF>)

<sup>7</sup> Paragraph 2.9, 2012 Statement



Communications Act set out the statutory regime that applies and section 303 requires Ofcom to publish the Code on Television Access Services”.

## Current arrangements for domestic channels

- 2.13 Ofcom is required under Section 303 of the Act to draw up, and from time to time to review and revise, a code setting out the rules broadcasters must follow in providing subtitling, audio description and signing (together referred to as ‘access services’). Ofcom’s Code on Television Access Services<sup>8</sup> (‘the Code’) was last revised in May 2015 in light of the changes to the signing arrangements for relevant domestic channels set in our 2015 Statement.
- 2.14 Licensees that have an audience share equating or higher than the ‘audience share threshold’<sup>9</sup> must provide access services as long as the assessed cost of doing so represents no more than 1% of the channel’s relevant turnover<sup>10</sup> (‘the expenditure cap’). Where a number of channels are in common ownership, Ofcom aggregates the relevant turnover for all channels that meet the audience share threshold and considers affordability against average revenues per channel.
- 2.15 In assessing the cost of providing access services, Ofcom uses data obtained from broadcasters in periodic surveys as well as data they provide each year on the ratio of first run to repeated programming.
- 2.16 As explained in paragraph 5 of the Code, for domestic channels access service obligations rise over time from the first anniversary of the relevant date. In the case of subtitling, the targets increase from 10% of content to 80% over 10 years; in the case of audio description, from 2% to 10% over 5 years.
- 2.17 As regards signing, the targets for channels with an audience share of or above the ‘signing threshold’<sup>11</sup> increase from 1% to 5% over 10 years.
- 2.18 Ofcom recently reviewed the signing arrangements applying to domestic channels with an audience share between the audience threshold and the signing threshold (‘relevant domestic channels’).<sup>12</sup> Starting from 2016, relevant domestic channels must either:
- a) show minimum monthly amounts of sign-presented programming on their channels between 7am and 11pm, rising from 30 minutes to 75 minutes over 10 years; or
  - b) contribute an annual sum, adjusted yearly to reflect inflation, towards alternative signing arrangements approved by Ofcom in light of factors set out in the Guidance to broadcasters of relevant channels on arrangements for signing (‘the Guidance’).

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<sup>8</sup> Ofcom’s Code on Television Access Services, 13 May 2015

(<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tv-access-services-2015.pdf>).

<sup>9</sup> 0.05% in the case of domestic channels.

<sup>10</sup> As defined in Amended Statement on Charging Principles. Ofcom, 20 December 2011

(<http://stakeholders.ofcom.org.uk/binaries/consultations/statement-charging-principles/statement/Statement-final.pdf>)

<sup>11</sup> The signing threshold (1% in the UK) is the minimum audience share over a year below which a qualifying channel would be excluded from the statutory signing obligations, and instead would be subjected to substitute signing requirements (sign-presentation in the UK).

<sup>12</sup> 2015 Statement

- 2.19 Almost all relevant domestic channels have chosen to contribute funding to the British Sign Language Broadcasting Trust (BSLBT), which funds sign-presented programming shown on the Community Channel and on its own web-based player<sup>13</sup>.

## Ofcom's 2012 consultation and statement

### Application of access service obligations to non-domestic channels

- 2.20 Ofcom's 2012 Consultation proposed that certain non-domestic licensees should provide access services for the benefit of viewers in those countries with sensory impairments. Ofcom said that 'consistent with European law, and with Ofcom's policy, the proposed criteria for selecting which non-domestic channels should provide access services are similar to those applying to domestic channels'<sup>14</sup>.
- 2.21 In particular, Ofcom noted<sup>15</sup> that:
- a) Article 7 of the AVMS Directive requires that 'Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability';
  - b) Article 2(1) of the Directive requires that 'Each Member State shall ensure that all audiovisual media services transmitted by media services providers under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State'; and
  - c) in accordance with Article 2(6), the Directive applies to all audiovisual media services intended for reception in one or more Member States.
- 2.22 As regards paragraph 2.21(b) above, Ofcom said that the 'system of law applicable' to services intended for the public in the United Kingdom is comprised within sections 303 to 308 of the Communications Act 2003. The Government had not considered that any new legislation was required to transpose the requirements of Article 7. Accordingly, Ofcom's starting point for developing access service obligations in relation to non-domestic broadcasters was the current arrangements for domestic channels.
- 2.23 Broadcasters sought 'clarification on Ofcom's view on whether it believes it is bound under European law to require exactly the same duties for non-domestic services as domestic ones regardless of audience benefit'. Ofcom's 2012 Statement:
- a) explained that it remained of the view that Ofcom is bound by the AVMS Directive to ensure that all television services licensed by Ofcom and intended for reception in one or more Member States of the European Union comply with United Kingdom legislation and in particular the Communications Act 2003 and the regulatory obligations imposed on providers under that legislation. Accordingly, in relation to television access services, sections 303 to 308 of the Communications Act set out the statutory regime that applies and section 303 requires Ofcom to publish the Code on Television Access Services; and

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<sup>13</sup> See BSL zone at <http://www.bslbt.co.uk/programmes/>.

<sup>14</sup> 2012 Consultation, paragraph 1.7

<sup>15</sup> *ibid*, paragraphs 2.5-2.7

- b) said that it considered that its proposals would indeed result in the application of the same general rules to all broadcasters, while enabling distinctions to be drawn depending on the circumstances. Ofcom's statement gave examples of these distinctions<sup>16</sup>.
- 2.24 The 2012 Statement set out Ofcom's decision that non-domestic channels licensed by Ofcom that meet relevant audience share and affordability criteria should provide subtitling and audio description with effect from 1 January 2014. The list of channels qualifying to provide access services in 2016 can be found at Annex 3.
- 2.25 The 2012 Statement confirmed<sup>17</sup> Ofcom's proposal in the 2012 Consultation<sup>18</sup> that non-domestic channels should be exempted from compliance with the obligations under section 303(5) of the Act (and therefore from the 'relevant date' as defined in section 303(5)), and instead the same access service quotas should be calculated by reference to anniversaries of the 'notice date' (1 January 2013).

### **Arrangements in relation to signing on non-domestic channels**

- 2.26 In relation to signing, Ofcom's 2012 Statement noted that:
- a) there was general agreement amongst respondents that broadcasters should be allowed the option of providing additional subtitling for a transitional period;
  - b) broadcasters had expressed concerns about the provision of sign-presented programming on cost grounds, and have suggested that Ofcom should establish what the preferences of sign language users are for access services. In particular, broadcasters have asked that Ofcom consider allowing sign-interpreted programming, subtitling or other alternatives instead;
  - c) the EUD wanted to ensure that, following the transitional period, appropriate arrangements reflecting the interests of sign language users were put in place. To this end, it asked Ofcom to ensure that organisations representing the interests of deaf people were consulted on these arrangements; and
  - d) it would not be proportionate to require channels providing a single feed to several countries using different forms of sign language to provide programming in multiple signing formats.
- 2.27 Ofcom reaffirmed the importance of ensuring that the arrangements following the transitional period are best suited to sign language users. It is conceivable, for instance, that in countries where there is not a large amount of sign-interpreted programming available (unlike the UK), sign language users might prefer a greater volume of sign-interpreted programming to a smaller amount of sign-presented programming.
- 2.28 Ofcom therefore proposed to seek the views of stakeholders, including sign language users and broadcasters, during the transitional period. We have held discussions with both national organisations representing deaf sign language users, and with broadcasters. These discussions have informed our analysis of options, and Ofcom's proposals, which can be found in Section 4. Ofcom's proposals also take account of

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<sup>16</sup> 2012 Statement, paragraph 2.12

<sup>17</sup> *ibid*, paragraph

<sup>18</sup> *ibid*, paragraphs 3.24 to 3.37

recent decisions to amend the signing arrangements applicable to domestic broadcasters.

## **Access service obligations for channels in EEA EFTA countries**

- 2.29 Since Ofcom published its December 2012 Statement, there has been a change to the application of the AVMS Directive, which previously applied only to Member States of the European Union. On 1 February 2013, pursuant to a decision of the EEA Joint Committee<sup>19</sup>, the provisions of the AVMS Directive were incorporated into the EEA Agreement.
- 2.30 The effect of this is that rights and obligations derived from the AVMS Directive now apply to Norway, Iceland and Liechtenstein ('EEA EFTA states')<sup>20</sup>. As explained in Section 5, this also means that certain non-domestic channels serving Norway will have to meet obligations to provide subtitling, audio description and signing on a proportion of their programmes. For the reasons explained in Section 5, it is unlikely that there will be any practical impact on channels targeting Iceland and Liechtenstein.

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<sup>19</sup> Decision of the EEA Joint Committee No 109/2012 of 15 June 2012 (<http://www.efta.int/media/documents/legal-texts/eea/other-legal-documents/adopted-joint-committee-decisions/2012%20-%20English/109-2012.pdf>).

<sup>20</sup> Provisions of EU law referred to in the Annexes to the EEA Agreement are applicable in accordance with the Agreement and Protocol 1 on Horizontal Adaptations, unless otherwise provided in the respective Annex. See Paragraph 7 of Protocol 1 (<http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Protocols%20to%20the%20Agreement/protocol1.pdf>)

## Section 3

# Proposed extension of transitional arrangements

## Introduction

- 3.1 In this section, Ofcom explains its proposals to extend by one year, to 31 December 2016, the transitional arrangements which allow broadcasters to substitute their signing obligations by providing additional subtitling.

## Background

- 3.2 Ofcom noted in its May 2012 consultation that domestic channels were permitted to propose alternative ways of contributing to the provision of sign-presented programmes, for which British sign language users had expressed a preference.<sup>21</sup> We expressed concern that simply obliging non-domestic broadcasters to make immediate arrangements for sign-presented content on their own channels could prejudice the opportunity to devise arrangements that might better suit the needs of sign language users. Ofcom therefore proposed that, for a transitional period of two years from 1 January 2014, broadcasters should be allowed the alternative of providing additional subtitling in place of signing, in order that Ofcom can have the opportunity to devise alternative arrangements that may be more beneficial to sign language users.
- 3.3 In October 2012, Ofcom decided that non-domestic channels should meet their obligations by providing at least 30 minutes of sign-presented programming in their schedules each month, unless the broadcaster secures Ofcom's consent to alternative arrangements<sup>22</sup>. However, in lieu of these arrangements, Ofcom said that for a two year period expiring on 31 December 2015, broadcasters could meet their signing obligations by providing an additional 5% more subtitling, over and above their subtitling quota.
- 3.4 The purposes of these transitional arrangements were:
- a) to avoid the risk that simply obliging non-domestic broadcasters to make immediate arrangements for sign-presented content on their own channels which could prejudice the opportunity to devise arrangements that would better suit the needs of sign language users; and
  - b) to allow time for sign language users to consider which arrangements might best suit their needs, and for broadcasters and national deaf groups representing sign language users to discuss ways in which these aspirations could be met.
- 3.5 Ofcom's 2012 Statement reaffirmed the importance of ensuring that the arrangements following the transitional period are best suited to sign language users. It is conceivable, for instance, that in countries where there is not a large amount of sign-interpreted programming available (unlike the UK), sign language users might prefer a greater volume of sign-interpreted programming to a smaller amount of sign-

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<sup>21</sup> Section 3, 2012 consultation

<sup>22</sup> See paragraph 1.14, 2012 Statement

presented programming. Ofcom therefore proposed to seek the views of stakeholders, including sign language users and broadcasters, during the transitional period.

- 3.6 Since then, we have met with representatives of most relevant national deaf groups, and corresponded with them. We have also met most relevant broadcasters, and corresponded with them. As discussed in Section 4, the proposals for alternative arrangements mooted by both national deaf groups and broadcasters suggest that sign language users in different EU Member States may have different preferences to those in the UK, and that it may be appropriate for the criteria in Ofcom's guidance to take this into account.

## Proposed extension of transitional arrangements

- 3.7 The discussions with and between broadcasters and national deaf groups have taken longer than expected, so Ofcom will not be able to publish its decisions before the beginning of 2016.
- 3.8 In the light of responses to the consultation proposals explained in the following sections, Ofcom expects to take a final decision during 2016 on whether to implement the proposals in this document. Regardless of the outcome, Ofcom's rules will permit (not compel) broadcasters to propose alternatives to the requirements if they wish. If Ofcom concludes that its proposals to amend signing obligations should be implemented, we anticipate on the basis of UK experience that broadcasters will need further time to consult national deaf groups, to draw up proposals for consideration by Ofcom, and to implement any arrangements that Ofcom may accept. It would not be practicable for this process to be completed before the end of the current transitional period.
- 3.9 We consider that it is important both for sign language users and broadcasters that broadcasters have sufficient time to prepare and implement well thought-through plans that address the needs of sign language users. We therefore propose to extend the transitional period for an additional interim period of a further 12 months, so that they have time to do this. During this period, qualifying channels will be subject to the same signing obligations as during the first two years of the transitional period, including the possibility to substitute their signing obligations by providing additional subtitling (comprising 5% of their qualifying hours) on top of their existing subtitling quota, should they wish.

*Q1. Do you agree that the transitional period should be extended to 31 December 2016, during which time broadcasters would be able to provide additional subtitling (comprising 5% of their qualifying hours) on top of their existing subtitling quota, in lieu of their signing obligation?*

- 3.10 Ofcom expects to publish its decision on whether to extend the transitional period by the end of December 2015.

## Section 4

# Proposed changes to signing requirements

## Introduction

4.1 This section explains:

- a) how signing requirements for domestic channels have evolved;
- b) why we consider that a review of signing requirements for non-domestic channels is appropriate; and
- c) Ofcom's proposals to modify the current signing requirements for non-domestic channels by providing for requirements to rise over time, in the same way as for domestic channels.

## Signing requirements for domestic channels with smaller audiences

4.2 In 2006, Ofcom considered whether the rules on programmes with sign language were helping deaf people in the UK. We found that very few people, if any, watched the sign-interpreted programmes on TV channels with small audiences. Ofcom concluded that showing sign-interpreted programmes in the middle of the night on TV channels with small audiences was delivering almost no benefit to deaf people.

4.3 Following a consultation in 2007<sup>23</sup>, Ofcom decided<sup>24</sup> to exempt domestic channels with smaller audiences – that is those between the audience share and signing thresholds set out in the Code – from the statutory signing obligations. Instead, Ofcom substituted different regulatory requirements, which required these channels to schedule at least 30 minutes per month of sign-presented programming on their channel. Ofcom also said that it would consider proposals for alternative ways of achieving the objective of making more sign-presented programmes available for sign language users.

4.4 In setting the minimum requirement of 30 minutes a month, Ofcom concluded that:

- a) shorter or less frequent targets than 30 minutes a month would not be reasonable, given the policy objective of increasing the amount of sign-presented programming<sup>25</sup>; and
- b) a requirement for 30 minutes of sign-presented content programming should be substituted for the then target of 2% of sign-interpreted content that applied to most channels.

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<sup>23</sup> *Signing on Television* (Consultation), Ofcom, May 2007 (the '2007 Consultation') (<http://stakeholders.ofcom.org.uk/binaries/consultations/signing/summary/signing.pdf>)

<sup>24</sup> *Signing on Television* (Statement), Ofcom, December 2007 (the '2007 Statement') (<http://stakeholders.ofcom.org.uk/binaries/consultations/signing/statement/statement.pdf>)

<sup>25</sup> Paragraph 3.27 of the 2007 Consultation



- 4.5 In July 2014<sup>26</sup>, Ofcom consulted on proposals to increase the minimum requirements for sign-presented programming over time, in the same way as other access services obligations. Among the reasons for our changed approach was the fact that revenues for this category of channels have grown substantially over the past few years, thereby reducing the risk of reduction in the number of channels providing access services as a result of rising signing costs.
- 4.6 Following the consultation, Ofcom's 2015 Statement concluded that, with effect from 1 January 2016, domestic channels with smaller audience shares should provide the minimum amounts of sign-presented programming shown in Figure 2 below, subject to the transitional arrangements outlined in paragraph 4.7 below, and to the provision that Ofcom will consider proposals for alternative arrangements in the light of the criteria in the Guidance (Annex 5).

**Figure 2: Current signing requirements for domestic channels with smaller audience shares (between the audience and signing thresholds)**

Signing requirements from anniversary of relevant date	1 <sup>st</sup> to 2 <sup>nd</sup>	3 <sup>rd</sup> to 4 <sup>th</sup>	5 <sup>th</sup> to 6 <sup>th</sup>	7 <sup>th</sup> to 9 <sup>th</sup>	10 <sup>th</sup> onwards
Sign-presentation only <b>or</b>	30' x 12 (30' a month)	30' x 12	45' x 12	60' x 12	75' x 12
Contributions to alternative arrangements	£24.5k*	£24.5k	£36.8k	£49.1k	£61.4k

\*In 2014 money. Adjusted annually for inflation using Consumer Prices Index

- 4.7 Under these arrangements, channels that have been operating for some years would face a significant percentage increase in the requirements placed upon them. Ofcom has therefore implemented transitional arrangements for those channels that have reached the fourth or later anniversary of their qualifying date<sup>27</sup> by 1 January 2016 ('established channels'), which will allow for the obligations to be introduced more gradually. Under the transitional arrangements the monthly signing obligations that will apply to established channels are 35 minutes in 2017, 45 minutes in 2018, 50 minutes in 2019, 60 minutes in 2020, 65 minutes in 2021, and 75 minutes in 2022. -
- 4.8 No change was made to the statutory obligations on other channels required to provide television access services, that is, channels with audience shares above the signing threshold (1%). They continue to be subject to an obligation to provide signing on a proportion of their programmes, rising over ten years from 1% to 5%.

## Review of signing requirements for non-domestic channels

- 4.9 In the light of its decisions on changes to signing requirements for domestic channels with smaller audiences shares, Ofcom has concluded that it would be appropriate to review those for non-domestic channels with total viewing at or above the audience share threshold but below the signing threshold. As with the rules for domestic channels, no changes are proposed to the requirements for non-domestic channels

<sup>26</sup> *Review of signing arrangements for relevant TV channels*, Ofcom, July 2014

<sup>27</sup> The relevant date for non-PSB channels is the date the channel started broadcasting, or 29 December 2003, whichever is the later. Access service obligations start on the first anniversary of the relevant date.



with larger audiences (i.e. above the signing thresholds as set out in Annex 2 to the Code).

- 4.10 As explained above, European legislation requires Member States to regulate both domestic and non-domestic channels in accordance with the rules of the system of law applicable in the United Kingdom. These rules are grounded in sections 303 to 308 of the Act. Ofcom has amended the rules applying to domestic channels, and it is therefore appropriate to consider whether similar changes should be made to the rules applying to non-domestic channels.
- 4.11 Unlike the amended provisions for domestic channels, the signing requirements applying to non-domestic channels currently do not rise over time. Although viewers who use subtitling or audio description will benefit from increases in accessible content ranging from 10% to 80% (subtitling) and 2% to 10% (audio description) respectively, those who rely on sign language do not. National deaf groups in Europe have made clear to Ofcom that the sign language users they represent would like more accessible TV programming.
- 4.12 In reviewing the signing requirements for domestic channels with lower audience shares in 2007, Ofcom's objective was to devise arrangements that would better meet the needs of sign language users in the UK. In light of the clear preference of sign language users in the UK for sign-presented programming<sup>28</sup>, we first excluded these channels from the statutory signing obligations and instead subjected them to sign-presentation requirements.
- 4.13 Ofcom's objective in relation to sign language users served by non-domestic channels remains the same – to devise arrangements that would better meet the needs of sign language users in the country concerned. Ofcom is aware that some national deaf groups in countries served by non-domestic channels might prefer alternatives to the proposed requirement for sign-presented programmes, such as additional subtitling or sign-interpretation. In the light of these considerations, Ofcom has reviewed the signing requirements for non-domestic channels and proposes the changes described below.

## **Proposed changes**

### Proposed requirements

- 4.14 Ofcom proposes that quotas for sign-presented programming should rise over time, in the same way as for domestic channels as shown in the second row of the table at Figure 3 below.

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<sup>28</sup> Ofcom, *Signing on television – new arrangements for low audience channels*, 4 December 2007; see paragraph 3.20.

**Figure 3: Levels of proposed requirements, substitute requirements, and contributions to alternative arrangements**

		Signing (from anniversary of notice date)	1 <sup>st</sup> to 2 <sup>nd</sup>	3 <sup>rd</sup> to 4 <sup>th</sup>	5 <sup>th</sup> to 6 <sup>th</sup>	7 <sup>th</sup> to 9 <sup>th</sup>	10 <sup>th</sup> onwards
1	Statutory obligations	<b>Sign-interpretation / Sign Presentation</b> (for reference purposes only)	1% of output	2%	3%	4%	5%
2	Proposed requirements (s303(10)(c) of the Act)	<b>Sign-presentation</b>	30' x 12 (30' a month)	30' x 12	45' x 12	60' x 12	75' x 12
3	Substitute requirements	<b>Sign-interpretation</b>	1% of output	2%	3%	4%	5%
4		<b>Extra subtitling</b>	5%	5%	7.5%	10%	12.5%
5	Alternative arrangements	<b>Minimum contributions to alternative arrangements*</b>	£24.5k	£24.5k	£36.8k	£49.1k	£61.4k

\*2014 prices, subject to annual adjustment in line with CPI.

*Q2. Do you agree that requirements on non-domestic channels to provide minimum amounts of sign-presented programming should rise over time, as shown in the table at Figure 3, in the same way as the requirements on domestic channels?*

**Scope for substitute requirements**

- 4.15 It is clear to Ofcom from the discussions we have had with EUD member organisations and broadcasters that:
- a) sign language users would welcome more accessible programming, but their needs and preferences vary from one country to another. For example, some national deaf groups have expressed interest in the possibility of subtitling for locally-produced programmes, as distinct from subtitling produced for the purpose of translating English-language programming into the local language; and
  - b) broadcasters would like be able to propose substitute arrangements that might differ from those in the UK.
- 4.16 Given that Ofcom has modified the signing requirements in the UK to reflect the preferences of sign language users here, Ofcom sees no reason why signing requirements for other Member States should not also reflect the particular

preferences of sign language users in those states, to the extent permitted by legal and practical considerations.

- 4.17 Ofcom would therefore consider substituting the proposed requirements for sign presentation with other requirements if it considers this justified having regard to our policy objectives (see paragraphs 4.12-4.13).
- 4.18 As noted above, having considered these factors, Ofcom decided in 2007 to exempt domestic channels with a low audience from statutory obligations and to impose other requirements – in this case, a requirement for sign-presented programmes.
- 4.19 In order that substitute requirements should be transparent both to broadcasters and sign language users, and consistent (both with domestic signing requirements, and as between different broadcasters), Ofcom has set out proposed minimum requirements for different forms of provision in Figure 3 above. The basis for these minimum requirements is explained below.

### Sign-interpretation

- 4.20 The proposed quotas are based on the Code provisions that stem from section 303(5) of the Act.

### Extra subtitling

- 4.21 The proposed quotas would be in addition to the maximum 80% subtitling quota and would rise in steps corresponding to the sign-interpretation quotas. Extra subtitling would be capped at 15% in recognition of the fact that, inevitably, some planned subtitling fails, for a variety of reasons. If the cap was 20% (on top of the maximum 80% subtitling quota), there would be no scope for broadcasters to provide additional subtitling to compensate for these failures.

Q3. *Do you agree that any requirements to provide sign-interpreted programmes or extra subtitling should rise over time as indicated in the table at Figure 3?*

### Alternative arrangements

- 4.22 Both domestic and non-domestic channels are permitted to propose alternative arrangements that would meet the same objectives as the requirement to broadcast sign-presented programmes. Ofcom has published *Guidance to broadcasters of relevant channels on arrangements for signing* ('Guidance') alongside the Code setting out the criteria it would expect proposed alternative arrangements to meet.
- 4.23 Ofcom proposes that, in cases where it has decided that a substitute requirement (such as sign-interpreted programming or extra subtitling) is appropriate, it should also be prepared to consider proposals for alternative arrangements that would contribute to the provision of the same form of assistance.
- 4.24 To this end, Ofcom proposes some consequential changes to the Guidance that are shown in Annex 5. These would replace references to 'sign-presented programming' with 'accessible programming'.
- 4.25 As with domestic channels, Ofcom would also consider proposals to meet the objectives underlying the signing requirements in different ways, provided that:

- a) the broadcaster proposes an alternative way of making its television programmes accessible to sign language users in the country concerned, or of contributing to the provision of accessible television programmes. The provision of accessible content through on-demand services or means other than television would not be consistent with the provisions of section 303(1) of the Act);
- b) Ofcom is satisfied that the proposed alternative arrangements would make television programming accessible in a way that is consistent with the preferences of sign language users in the country concerned, having regard to the views of relevant EUD member organisations; and
- c) those arrangements meet the minimum requirements set out in row four of Figure 3 above, as applicable, reflecting the changes made to signing obligations for domestic channels (see paragraphs 4.5 to 4.7 above) but providing scope for programmes to be made accessible in different ways if there is evidence that deaf people would prefer this. We explain the proposed minimum requirements below.

*Q4. Do you agree that, in cases where Ofcom has decided that a substitute requirement is appropriate, it should:*

- a) consider proposals for alternative arrangements that would contribute to the provision of the same type of assistance; and*
- b) make the consequential changes to its Guidance as shown in Annex 5?*

#### Proposed minimum contributions

- 4.26 Ofcom's 2012 Statement allows non-domestic channels the option of contributing to acceptable alternative arrangements if they wish, provided that they contribute a minimum of £20k per annum. As with contributions in respect of domestic channels, we propose that minimum contribution levels would be adjusted annually for inflation by reference to the UK Consumer Price Index (CPI).
- 4.27 We considered whether it would be practicable and proportionate to adjust prices by reference to different indices for different countries. However, given that broadcasters have chosen to be regulated in the UK, we consider that it is reasonable to use the same contribution levels and indexing arrangements as for domestic channels. Participation in alternative arrangements would remain completely voluntary.

*Q5. Do you agree that the proposed minimum contributions towards alternative arrangements should rise over time, as set out in the table at Figure 3, and be protected from inflation by index-linking to the UK Consumer Price Index?*

- 4.28 Subject to the outcome of the consultation, Ofcom would encourage national deaf groups and broadcasters to discuss any proposals for substitute requirements, in order that Ofcom has time to consider them well before 1 January 2017. This is the date when signing requirements for non-domestic channels would start to apply under our current proposals to extend the transitional period by 12 months (see Section 3).

#### **Proposed amendments to the Code and Guidance**

- 4.29 Annexes 4 and 5 sets out proposed amendments to the Code and Guidance, intended to give effect to the proposals explained in this section.

*Q6. Do you agree with the proposed amendments to the Code and Guidance?*

## Signing arrangements for UK channels available in the Republic of Ireland

- 4.30 Some domestic channels are made available by the relevant broadcaster in the Republic of Ireland, using the same satellite stream that serves viewers to satellite services (Sky and Freesat) in the UK. These channels are simultaneously domestic and non-domestic channels.
- 4.31 Most of these channels include sign-interpreted programmes using British Sign Language (BSL). However, the sign language used in the Republic of Ireland – Irish Sign Language – differs from BSL. By the same token, Irish domestic channels that are made available in Northern Ireland (where both BSL and Irish Sign Language is used) offer some programmes with Irish Sign Language, but none with BSL.
- 4.32 Ofcom recognises that Irish deaf people who use sign language may wish to see TV programmes accompanied by or presented in Irish Sign Language. However, this would require the provision of a separate satellite stream with separate playout arrangements, and the preparation and insertion of programmes prepared specifically for users of Irish Sign Language. Ofcom's initial view is that this would be disproportionate, given the relatively small number of sign language users in the Republic of Ireland<sup>29</sup>.
- 4.33 Ofcom also understands that, although programmes with Irish sign language are now available on a number of TV channels based in the Republic of Ireland, deaf people there have watched BSL sign-interpreted programmes on British channels, as for many years there were few if any alternatives. Data on traffic to BSLBT's website also suggests that people from the Republic of Ireland make use of BSLBT's Sign Zone, enabling them to watch a range of programmes. Finally, a high proportion of programmes included in domestic channels made available in the Republic of Ireland are subtitled.

*Q7. Do you agree with Ofcom's initial view that requiring non-domestic channels broadcasting in the Republic of Ireland to be subject to specific signing obligations would be disproportionate?*

## Estimated impact of Ofcom's proposals

- 4.34 Ofcom's proposals could result in broadcasters meeting the signing requirements in a variety of ways. The more detailed impact assessment at Annex 6 explains how we have estimated the costs that such broadcasters would face, and the scale of the impact on different broadcasting groups (anonymised, for reasons of commercial confidentiality).
- 4.35 The results are summarised in the table at Figure 4 in terms of:
- how many of the 39 channels that will be required to provide access services in 2016 might be exempted by 2023 on grounds of affordability if they all met the requirements with sign-interpreted programming; or sign-presented programming; or extra subtitling; or contributions to alternative ways of meeting the regulatory objective; and

<sup>29</sup> There are 4,500 Deaf Irish Sign Language users in the Republic of Ireland, according to the European Union of the Deaf; see: <http://eud.eu/Ireland-i-188.html>.

- b) the cost to broadcasters of providing access services in 2023 (when signing requirements would reach their highest level), as measured by the percentage of the aggregated turnover for relevant channels.

**Figure 4 – Impacts of the proposals under different scenarios**

Non-domestic channels exempt from access service obligations on cost grounds (by scenario) by 2023			
Sign-presentation	Sign-interpretation	Extra Subtitling	Contributions to alternative arrangements
23/39	0/39	0/39	4/39
Total access service costs as a % of relevant turnover (by scenario) by 2023			
Sign-presentation	Sign-interpretation	Extra Subtitling	Contributions to alternative arrangements
0.69%	0.35%	0.46%	0.68%

- 4.36 On this basis, we do not consider that the proposals would result in a disproportionate burden on broadcasters. Nor do we consider that there would be significant impact on those relying on subtitling or audio description to understand and enjoy television.
- 4.37 The results of the assessment at Annex 6 suggests that obligations met by providing sign-interpreted content or extra subtitling would not affect the number of channels required to provide access services, and that few would exceed the 1% expenditure cap if they were permitted to contribute to alternative ways of meeting the regulatory objective. However, if all channels met their obligations with sign-presentation, a substantial proportion would exceed the 1% expenditure cap (which allows channels to be exempted from access service obligations if the estimated cost as assessed by Ofcom would exceed 1% of relevant turnover attributable to that channel).
- 4.38 However, it should be borne in mind that there are a number of mitigating factors.

Mitigating factors

- 4.39 It is important to note that:
- a) we do not propose any changes to the 1% expenditure cap;
  - b) before agreeing to any proposals for alternative ways of meeting regulatory objectives Ofcom will consider whether they might result in the a broadcaster exceeding the 1% expenditure cap, and thereby becoming exempt from the obligation to provide access service;
  - c) some national deaf groups have indicated an initial preference for more subtitling in lieu of signing, which could be cheaper for broadcasters.
- 4.40 Therefore, a more likely outcome is that relatively few non-domestic channels would be exempted from access services requirements on affordability grounds.
- 4.41 Ofcom has said that it intends to carry out a review in 2019 of how the arrangements for domestic channels are working, and whether regulation is delivering the expected benefits to sign language users, and whether, as anticipated, the costs to most broadcasters remain a very small proportion of relevant turnover. Subject to the

outcome of this consultation, Ofcom proposes to carry out a similar review of the arrangements for non-domestic channels at the same time.

## Section 5

# Proposal for access service obligations on channels serving EEA EFTA states to start in January 2017

## Introduction

- 5.1 In this section, we explain:
- a) why qualifying channels in Iceland, Liechtenstein and Norway ('EEA EFTA States') are subject to access service obligations;
  - b) what the practical implications are for qualifying channels that target EEA EFTA States, and
  - a) why Ofcom proposes that qualifying channels should begin providing access services with effect from 1 January 2017.

## UK, EU and EEA legal provisions

- 5.2 On 1 February 2013 pursuant to a decision of the EEA Joint Committee<sup>30</sup>, the provisions of the AVMS Directive were incorporated into the EEA Agreement. The effect of this is that rights and obligations derived from the AVMS Directive were extended to apply to Norway, Iceland and Liechtenstein ('EEA EFTA States')<sup>31</sup>.
- 5.3 Ofcom therefore considers that it would be appropriate to regulate non-domestic channels targeting EEA countries in the same way as non-domestic channels targeting EU Member States other than the UK.

## Practical implications

- 5.4 The practical implications of this are that:
- a) channels targeting EEA EFTA states that have an audience share equating or higher than the 'audience share threshold'<sup>32</sup> must provide access services as long as the assessed cost of doing so represents no more than 1% of the

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<sup>30</sup> Decision of the EEA Joint Committee No 109/2012 of 15 June 2012 (<http://www.efta.int/media/documents/legal-texts/eea/other-legal-documents/adopted-joint-committee-decisions/2012%20-%20English/109-2012.pdf>).

<sup>31</sup> The contracting parties of the EEA Agreement are the 28 EU Member States and three EFTA States: Iceland, Liechtenstein and Norway, Switzerland, the other EFTA State, is not party to the EEA Agreement.

<sup>32</sup> The audience share threshold for each EU Member State is set by Ofcom in Annex 2 to the Code on Television Access Services, and it is the minimum audience share below which any channel would be excluded from access services requirements under the Code.



channel's relevant turnover<sup>33</sup> ('the expenditure cap'). We explain below the audience share thresholds that will apply;

- b) access service obligations will be assessed according to Code provisions applying to non-domestic channels, and will be calculated by reference to the notice date (1 January 2013) or the date the channel commenced broadcasting (if later); and
- c) any changes made to access service obligations for non-domestic channels as a result of Ofcom's decisions in relation to the present consultation will apply equally to channels targeting EEA EFTA states.

5.5 The audience share and signing thresholds for EEA EFTA states have been assessed using the methodology applied to other European states<sup>34</sup> and the latest available audience data. The results are set out in the table in Figure 5 below.

**Figure 5: Audience share and signing thresholds for Iceland, Lichtenstein and Norway**

EEA Country	Audience Share Threshold	Signing Threshold
Iceland	22.85%	*
Liechtenstein	71.16%	*
Norway	0.90%	18.06%

\*In these cases, the nominal threshold would exceed 100% of total viewing

### Proposed commencement Date

5.5 Ofcom recognises that it would be impracticable for broadcasters to start providing access services immediately, as they would need to enter into arrangements to procure and distribute the access services. Ofcom's usual practice is to give broadcasters of channels (both domestic and non-domestic) about six months' notice of a requirement to provide access services in the following year. For example, Ofcom published a list of qualifying domestic and non-domestic channels for 2016 in June 2015.

5.6 Accordingly, Ofcom is proposing that, non-domestic channels targeting these countries which meet the same eligibility criteria as other non-domestic channels should be required under the Code to meet the same access service obligations with effect from 1 January 2017. We consider that this would give broadcasters of non-domestic channels made available in these countries sufficient time to prepare for the access services requirements that they might be subject to in 2017.

### Estimated impact

5.7 Our understanding is that there are no Ofcom-licensed channels that specifically target Iceland and Lichtenstein. Given the small size of the populations of both states, the audience share thresholds for both are relatively high, so it is unlikely that, in future, an Ofcom-licensed channel would qualify to provide access services.

<sup>33</sup> As defined in the Amended Statement on Charging Principles. Ofcom, 20 December 2011 (<http://stakeholders.ofcom.org.uk/binaries/consultations/statement-charging-principles/statement/Statement-final.pdf>).

<sup>34</sup> 2012 Consultation; paragraphs 3.2-3.37

- 5.8 The population of Norway is rather higher, so the audience share threshold is commensurately lower. There are eight channels licensed by Ofcom and broadcasting in Norway which in 2014 had an audience share equal or above the audience share threshold. Our assessment of the impact of our proposals focuses on these eight channels and the broadcasting groups into which they fall.
- 5.9 The more detailed impact assessment at Annex 7 explains how we have estimated the costs that such broadcasters would face, and our treatment of revenues and inflation. Annex 7 invites views from interested parties on Ofcom's impact assessment. In brief:
- a) assuming all channels were required to meet their signing obligations by showing minimum amounts of sign-presented programming, all non-domestic channels in Norway would be exempted from access services obligations on the grounds of affordability in 2017;
  - b) assuming all channels were required to meet their signing requirements by providing sign-interpretation, five of the eight channels meeting the audience share threshold would be required to provide access services from 2017 to 2023 (when the maximum quotas would apply), but three would be exempted on the grounds that their costs would exceed 1% of their relevant turnover;
  - c) assuming all channels were required to meet their signing requirements by providing extra subtitles, all eight channels would still be required to provide access services between 2017 and 2023;
  - d) finally, assuming all channels met their signing requirements by contributing to alternative arrangements, four channels would be required to provide access services between 2017 and 2023, while four channels would be exempted on the grounds of affordability.

*Q8. Do you agree that qualifying channels targeting EEA EFTA countries should be required to start providing access services from 1 January 2017?*

## Annex 1

# Responding to this consultation

## The issues

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on **16 December 2015**. It would be helpful if your response could include direct answers to the questions asked in this document, repeated below. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Q1. *Do you agree that the transitional period should be extended to 31 December 2016, during which time broadcasters would be able to provide additional subtitling (comprising 5% of their qualifying hours) on top of their existing subtitling quota, in lieu of their signing obligation?*

Q2. *Do you agree that requirements on non-domestic channels to provide minimum amounts of sign-presented programming should rise over time, as shown in the table at Figure 3, in the same way as the requirements on domestic channels?*

Q3. *Do you agree that any requirements to provide sign-interpreted programmes or extra subtitling should rise over time as indicated in the table at Figure 3?*

Q4. *Do you agree that, in cases where Ofcom has decided that a substitute requirement is appropriate, it should:*

a) *consider proposals for alternative arrangements that would contribute to the provision of the same type of assistance; and*

b) *make the consequential changes to its Guidance as shown in Annex 5?*

Q5. *Do you agree that the proposed minimum contributions towards alternative arrangements should rise over time, as set out in the table at Figure 3, and be protected from inflation by index-linking to the UK Consumer Price Index?*

Q6. *Do you agree with the proposed amendments to the Code and Guidance?*

Q7. *Do you agree with Ofcom's initial view that requiring non-domestic channels broadcasting in the Republic of Ireland to be subject to specific signing obligations would be disproportionate?*

Q8. *Do you agree with the proposal that the implementation of access service obligations for channels targeting EEA EFTA member countries should start from 1 January 2017?*

Q9. *Are you a deaf sign language user? If so, which country do you live in? And which kind of assistance would you prefer?*

- A1.2 Corresponding questions have been posed in the plain English summary at Annex 2. Annex also contains an additional question, as follows.

Q9. *Are you a deaf sign language user? If so, which country do you live in? And which kind of assistance would you prefer?*

- A1.3 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Jack Genovese on 020 7981 3725.

## How to respond

- A1.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet shown at the end of this Annex. This will speed up our processing of responses, and help to maintain confidentiality where appropriate. If you are responding via email, post or fax you can download an electronic copy of the coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A1.5 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [jacopo.genovese@ofcom.org.uk](mailto:jacopo.genovese@ofcom.org.uk) attaching your response in Microsoft Word format, together with the coversheet.
- A1.6 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.
- A1.7 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Jack Genovese  
5th Floor  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Fax: 020 7981 3806

- A1.8 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

## Publication of responses

- A1.9 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.

- A1.10 If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.11 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.12 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>.

## Next steps

- A1.13 Following the end of the consultation period, Ofcom intends to publish a statement in 2016. You can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

## Ofcom's consultation principles

- A1.14 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

- A1.15 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

- A1.16 We will be clear about who we are consulting, why, on what questions and for how long.
- A1.17 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A1.18 We will consult for up to 10 weeks depending on the potential impact of our proposals.
- A1.19 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.
- A1.20 If we are not able to follow one of these principles, we will explain why.

## After the consultation

A1.21 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

A1.22 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell

Ofcom

Riverside House

2a Southwark Bridge Road

London SE1 9HA

Tel: 020 7981 3601

Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing  Name/contact details/job title

Whole response  Organisation

Part of the response  If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 2

# Ofcom's proposals for assistance to sign language users on non-domestic channels (plain English summary)

## Purpose of this summary

A2.1 This summary of Ofcom's proposals is intended mainly for people who use sign language to communicate. It has less detail than the main document, which is the definitive record of Ofcom's proposals and the reasons for them. Ofcom has prepared a translation of this summary into International Sign, which is available at the following link: <https://vimeo.com/143986162>.

## Ofcom's proposals

A2.2 Ofcom makes rules for channels broadcast in the UK (we call these domestic channels). We also make rules for some channels broadcast from the UK to other countries (we call these non-domestic channels). Ofcom has decided that some of these channels should provide assistance to people who cannot see or hear well. We have chosen those channels that we believe have large enough audiences to make this worthwhile, and earn enough money to pay for assistance. We call these 'qualifying channels'.

A2.3 Ofcom makes rules for both domestic and non-domestic channels on how they should help deaf people who use sign language to understand and enjoy television.

A2.4 In 2015, we told qualifying domestic channels that they should gradually increase the assistance they give to sign language users. They can do this by showing more programmes presented in sign language (like the BBC programme 'See Hear'). Or they can pay for different ways of making more sign-presented programmes available to sign language users on TV. One example is the British Sign Language Broadcasting Trust which makes sign-presented programmes shown on TV and on its website ([www.bslbt.co.uk](http://www.bslbt.co.uk)).

A2.5 So far, Ofcom has allowed broadcasters of qualifying non-domestic channels to provide subtitling instead of signing for two years ending in 2015. We called this a 'transitional period'. During this time, Ofcom, broadcasters and sign language users discussed what is the best way for non-domestic channels to give assistance to sign language users.

## We propose to extend the transitional period until the end of 2016

A2.6 As a result of these discussions, we are making the proposals presented in this document. We will decide on the proposals after we have considered what people think about them. We plan to make decisions in early 2016. Then it will take time to implement the decisions

*Q1. Do you agree that the new arrangements should start on 1 January 2017, and that, until then, broadcasters can carry on providing extra subtitling instead of signing?*



## **We propose that broadcasters should gradually increase their assistance for sign language users**

A2.7 Now, we think that qualifying non-domestic channels should also gradually increase the assistance they give to sign language users. As with domestic channels, we think the default rules should require broadcasters to show sign-presented programmes. But other kinds of assistance would be possible instead, if sign language users agreed.

*Q2. Do you agree that, as for domestic channels, the default rules should require broadcasters to show sign-presented programmes?*

A2.8 Depending on whether Ofcom agrees that broadcasters should provide sign-presented programmes, sign-interpreted programmes or subtitled programmes, and consistent with rules applying to domestic channels, we propose that the amount of assistance be as follows:

- a) a small amount of sign-presented programming. This would mean that, from 2017, TV channels would show a minimum of  $\frac{1}{2}$  hour a month from 2017, rising to  $\frac{3}{4}$  hour in 2018, 1 hour in 2020, and  $1\frac{1}{4}$  hours in 2023. The programmes would be shown between 7am and 11pm; or
- b) some sign-interpreted programming. This would mean that, from 2017, TV channels would show a minimum of 12 hours of sign-interpreted programming each month. This would rise to 17 hours in 2018, 23 hours in 2020, and 29 hours a month in 2023. It is likely that most of the programmes would be shown very late at night or early in the morning; or
- c) subtitled programming. This would mean that, from 2017, TV channels would show an extra 29 hours of subtitling programming each month, on top of the normal subtitling quota. This would rise to 44 hours in 2018, 58 hours in 2020, and 73 hours a month in 2023. It is likely that the programmes would be shown across the day, including in peak time. Ofcom would consider requests from sign language users to require that programmes produced in the local language are subtitled so far as possible.

*Q3. Do you agree that assistance provided by qualifying non-domestic channels should rise over time as shown in paragraph A2.8 above?*

## **We propose that broadcasters who wish to contribute to alternative arrangements instead of providing assistance on their own channels should pay more over time**

A2.9 In addition, we think that, just like broadcasters in the UK, qualifying non-domestic channels should be allowed to pay an annual contribution to fund the provision of the type of assistance on TV that sign language users prefer in the country concerned.

A2.10 This option is similar to what happens with qualifying channels in the UK. Qualifying domestic channels can propose alternative arrangements for providing more sign-presented programmes. So can non-domestic channels. If broadcasters of domestic channels choose to contribute to alternative arrangements, they must make a minimum annual contribution that will rise over time. The minimum contribution is protected from inflation through annual adjustments. For example, in the UK, broadcasters proposed the alternative of paying for the British Sign Language

Broadcasting Trust (BSLBT) to make sign-presented programmes that are shown on TV.

A2.11 This would mean that, from 2017, qualifying TV channels would pay a minimum contribution of £24,500 (about €33,500), rising to £36,800 (about €50,000) in 2018, £49,100 (about €67,000) in 2020, and £61,400 (about €84,000) in 2023. The minimum contribution would be protected from inflation through annual adjustments.

A2.12 We would like to know your views. But there are things that you may want to think about first:

- a) we could not ask broadcasters to contribute to assistance that is not made available on television. For example, we could not ask broadcasters to contribute to the cost of films made by deaf people for showing in cinemas or online;
- b) we could not make broadcasters propose alternative arrangements, even if deaf groups would like this;
- c) we could not make broadcasters spend more on access services (including signing, subtitling and audio description) than 1% of their total income; and
- d) we do not think it would be reasonable to make broadcasters provide sign-interpretation or sign-presentation on channels showing the same programmes at the same times in many different European countries.

*Q4. Do you agree that broadcasters should also be able to suggest alternative arrangements described under paragraph A2.9 above?*

*Q5. Do you agree that broadcasters that want to contribute to approved alternative arrangements should pay rising minimum contributions as shown in paragraph A2.11 above, and that these contributions should rise every year with inflation as measured by the UK Consumer Price Index?*

## **We propose to make changes to Ofcom's Code and Guidance in line with our proposals**

A2.13 Annexes 4 and 5 of this document show how the rules for signing would look like if we decided to go ahead with our proposals.

*Q6. Do you agree with the proposed changes to the rules shown in Annex 4 and Annex 5?*

A2.14 If, after this consultation, Ofcom decided that broadcasters should follow these rules, then we would encourage national deaf groups and broadcasters to discuss any possible substitute requirements or alternative arrangements, so that Ofcom has enough time to consider them well before 1 January 2017.

## **Signing requirements for channels shown in the Republic of Ireland**

A2.15 Some domestic channels are shown in the Republic of Ireland. They already show some programmes with British Sign Language on their channels, or contribute to alternative requirements (BSLBT). If we asked them to provide programmes with Irish Sign Language as well, the channels would have less programming for people who do not know Irish Sign Language, who are the majority of viewers, or pay for satellite capacity to stream a special version of the channel to the Republic of Ireland.

A2.16 We do not think that this would be reasonable. We also think that, some sign language users in the Republic of Ireland have watched programmes with BSL, and still watch programmes with BSL on the BSLBT website. The reason for this is that, for many years, there was no little or alternative on Irish television.

*Q7. Do you agree that it would not be reasonable to require domestic channels shown in the Republic of Ireland to provide further assistance for deaf people if they already show some programmes with British Sign Language on their channels, or contribute to alternative requirements?*

## Access services on non-domestic channels broadcast to Iceland, Liechtenstein and Norway

A2.17 In 2013 there was a change to European Law. As a result, Ofcom must treat qualifying channels broadcast to Iceland, Liechtenstein and Norway in the same way as qualifying non-domestic channels broadcast to European Union Countries.

A2.18 Ofcom believes that only some channels broadcast to Norway will qualify. We believe that broadcasters will need time to prepare for access services to be delivered. We propose that they should begin to provide access services from 1 January 2017.

*Q8. Do you agree that qualifying non-domestic channels broadcast to Norway should begin to provide access services from 1 January 2017?*

## Please let us have your views

A2.19 We would like to know what kind of assistance sign language users would want. There are three main types of assistance:

- a) sign-presented programming, like the BBC programme *See Hear*, or
- b) sign-interpreted programming, where the signer appears at the side or corner of the screen; or
- c) subtitling.

*Q9. Are you a deaf sign language user? If so, which country do you live in? And which kind of assistance would you prefer?*

A2.20 We would welcome views from deaf sign language users, groups representing their interests, and broadcasters. Please let us have your views by **16 December 2015**. You do not have to answer all the questions, but it would help us if you could let us know what you think. We would also be happy to offer further explanations to national deaf groups that are members of the EUD on request. You can e-mail us at [jacopo.genovese@ofcom.org.uk](mailto:jacopo.genovese@ofcom.org.uk). Thank you.

## Annex 3

# Non-domestic channels required to provide television access services in 2016

## Introduction

A3.1 Ofcom publishes mid-year a list of TV channels – domestic and non-domestic – required to provide access services in the following year. The list published in mid-2015<sup>35</sup> is shown below. A further list will be published in mid-2016.

<b>Level One (full requirements)</b> (35 channels, compared to 37 in 2015, covering eight EU Member States)	
<b>EU Member State</b>	<b>Channel</b>
Denmark	Kanal 4 <sup>36</sup>
	Kanal 5
	6'eren
	TV3 <sup>37</sup>
	TV3 Plus
	TV3 Sport 1
	The Discovery Channel
	TLC
France	Disney Cinemagic
Hungary	Viasat 3 <sup>38</sup>
Republic of Ireland*	BBC 1
	BBC 2
	Sky1
	Channel 4
	E4
Italy	AXN <sup>39</sup>
	The Discovery Channel
	Discovery Science

<sup>35</sup> *List of channels required to provide access services in 2016*, Ofcom, 22 June 2015 ([http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv\\_access\\_serv/channels-access-services-2016/](http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv_access_serv/channels-access-services-2016/))

<sup>36</sup> The licensee for the Kanal channels and 6'eren is SBS Discovery Media (UK)

<sup>37</sup> The licensee for TV3, TV3 Plus and TV3 Sport 1 is Modern Times Group ('MTG')

<sup>38</sup> The licensee for Viasat 3 is MTG

<sup>39</sup> The licensee for the AXN channels is AXN Europe, a subsidiary of Sony Pictures Entertainment

<b>Level One continued (full requirements)</b>	
<b>EU Member State</b>	<b>Channel</b>
Netherlands	Discovery Channel
	Investigation Discovery
	TLC
Poland*	Animal Planet
	The Discovery Channel
	Discovery Science
	Investigation Discovery
	TLC
	Travel Channel TV <sup>40</sup>
Sweden	The Discovery Channel
	Kanal 5
	Kanal 9
	Kanal 11
	TV3
	TV6
	TV8
	TV10

<b>Level Two (full requirements for signing and audio description; 66% of subtitling) (One channel, compared with Two in 2014)</b>	
<b>EU Member State</b>	<b>Channel</b>
Hungary	AXN

<b>Level Three (full requirements for signing and audio description; 33% of subtitling) (Four channels, compared with zero in 2014)</b>	
<b>EU Member State</b>	<b>Channel</b>
Poland*	AXN
	AXN White
	13 Ulica <sup>41</sup>
	Cartoon Network

\* Indicates countries where TV platforms do not generally support the provision of audio description and channels are exempt from the relevant requirements.

<sup>40</sup> The licensee for the Travel Channel TV is Scripps Networks International

<sup>41</sup> The licensee for 13 Ulica is Sparrowhawk International Channels, a subsidiary of NBC Universal

## Annex 4

# Code on Television Access Services: proposed amendments

*[proposed deletions are scored through; proposed additions are underlined. Explanatory notes in italics do not form part of the Code]*

1. This code<sup>42</sup> sets out the requirements on subtitling, sign language and audio description ('television access services') that apply to television services licensed in accordance with the Communications Act 2003, the Broadcasting Act 1996, or the Broadcasting Act 1990. Guidance on practices to be followed in providing access services is set out in Appendix 4 to this code. Ofcom notes that some broadcasters already provide television access services on a voluntary basis, and encourages broadcasters to do so where possible, and to have regard to relevant parts of the code and guidance.
2. In this code:
  - a) 'average audience share' means the audience share over a year in each country where the service is received;
  - b) 'domestic broadcaster' means the provider of a television programme service which is primarily intended for reception by members of the public within the United Kingdom. We call these television programme services 'domestic channels';
  - c) 'non-domestic broadcaster' means the provider of a television programme service which is primarily intended for reception by members of the public in Member States of the European Union other than the United Kingdom, and of member states of the European Economic Area to which the Audiovisual Media Services ("AVMS") Directive has been extended<sup>43</sup>. We call these television programme services 'non-domestic channels';
  - d) 'channels with larger audience shares' means channels with audience shares above the 'signing threshold' as set out in Annex 2 to the Code;
  - e) ~~relevant channels~~ 'channels with smaller audience shares' means channels subject to access services obligations with an audience share between the audience share and signing thresholds set out in Annex 2 to the Code, and which are excluded under section 303(9) of the Communications Act 2003 from the percentage targets for signing set out in paragraph 9A of this Code; and

<sup>42</sup> ~~Amended in accordance with Ofcom's statement: *Changes to signing arrangements for relevant domestic TV channels*, 13 May 2015 (<http://stakeholders.ofcom.org.uk/consultations/review-signing-arrangements-tv/statement>) ('2015 Statement')~~

<sup>43</sup> Directive 2010/13/EU has been extended to cover Norway, Iceland and Lichtenstein, which are member states of the European Economic Area.

- f) the 'notice date' for the purpose of determining the access service obligations of non-domestic channels is 1 January 2013<sup>44</sup>.

## Statutory provisions

3. Under Sections 303 to 305 of the Communications Act 2003 ('the Act'), Ofcom is required to draw up, and from time to time review and revise, a code giving guidance as to the extent to which television services should promote the understanding and enjoyment by persons who are deaf or hard of hearing, as well as those who are blind or partially sighted, or who have a dual sensory impairment (deafblind).
4. The code is to apply to licensed public service channels, digital television programme services, television licensable content services (TLCS), and restricted television services, as well any digital television programme services (DPS) provided by the Welsh Authority (including S4C Digital). The BBC Agreement<sup>45</sup> also requires the BBC to observe the code in respect of its public television services subject to any exclusions agreed between Ofcom and the BBC having regard to the considerations set out in section 303(8). The code is not to apply to electronic programme guides provided under a TLCS or DPS licence, or to services comprising advertising (teleshopping), which is excluded from the definition of programme for the purpose of section 303.
5. Ofcom is required to set ten year targets for subtitling, signing and audio description (~~'television access services'~~), as well as five year targets for subtitling. It is also empowered to set other interim targets, and these are set out in Tables 1, 2 3 and 4 below. The targets apply to the anniversary of the relevant date or notice date for the service in question.
6. The 'relevant date' for the purpose of determining the tenth anniversary of domestic services is 1 January 1997 in the case of BBCs 1 and 2, 1 January 1998 for Channel 5, and 1 January 2000 for Channels 3 and 4 and S4C Digital. In the case of digital television programme services, the relevant date is the date of entry into force of the legislation, which is 29 December 2003. In the case of television services starting after 29 December 2003, the relevant date is the date on which provision of that service commenced unless Ofcom has determined by reference to the factors set out in paragraph 12 that all the programmes in a particular service should be excluded and has imposed a separate timetable for alternative requirements in relation to that service. Ofcom may determine that a television service should be treated as a continuation of a previous service in order to prevent broadcasters from avoiding the requirements of this code by replacing one service with another.
7. Ofcom is also empowered to exclude certain types of programme or service from the requirement to provide television access services, or apply different targets to excluded programmes.

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<sup>44</sup> Ofcom, *Access services on non-domestic channels*, 1 October 2012 ([http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/statement/Non\\_dom\\_access\\_services.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/statement/Non_dom_access_services.pdf)) ('2012 Statement')

<sup>45</sup> The BBC Agreement can be found at the following link:  
[http://www.bbc.co.uk/bbctrust/governance/regulatory\\_framework/charter\\_agreement.html](http://www.bbc.co.uk/bbctrust/governance/regulatory_framework/charter_agreement.html)

## Targets

8. The statutory targets for broadcasters are expressed as percentages of the service, including all programmes<sup>46</sup> other than advertisements and programmes that have been excluded by reference to the factors summarised in paragraph 12. They rise from a low level to the ten-year targets prescribed by the Act, that is eighty per cent (80%) for subtitling, five per cent (5%) for signing and ten per cent (10%) for audio description. Different signing arrangements apply to relevant channels with smaller audience shares. In the case of Channel 3 and Channel 4, the relevant target for subtitling is 90%. The targets reflect the statutory requirement for subtitling to be applied at the rate of sixty per cent (60%) of non-excluded programmes from the fifth anniversary. 8A. [moved from paragraph 11, to make clear that it applies to all channels] The targets represent minimum obligations and apply from each anniversary referred to in the case of Table 1 and Table 2, for each calendar year as referred to in Table 3, and from each anniversary referred to in the case of Table 4. In compliance with section 303(3) of the Communications Act, from the fifth anniversary, targets will apply on a rolling basis starting each week from one week after the date to which the previous annual average has been calculated.

### Public service broadcasters

9. Licensed public service broadcasters and S4C which are already under an obligation to provide television access services are required to continue meeting the interim targets set in Annex 1. The BBC is required to continue meeting the interim targets to which it has committed itself, also set out in Annex 1. ~~Other broadcasters are required to meet the targets set out in Table 1 below<sup>47</sup>.~~

### Domestic and non-domestic channels with larger audience shares

- 9A. Other channels (both domestic and non-domestic) with an average audience share higher than the signing threshold are required to meet the targets set out in Table 1 below.<sup>48</sup>

<sup>46</sup> Section 405 of the Communications Act provides that ‘programme’ includes an advertisement and, in relation to a service, anything included in that service. Section 303(13) excludes advertisements from the meaning of programme for the purpose of that section.

<sup>47</sup> ~~A list of channels required to provide access services is available on Ofcom’s website at [http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv\\_access\\_serv/](http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv_access_serv/). The targets applying to all these channels can be found in the most recent of the periodic reports published by Ofcom on its website at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/tv-access-services-reports/>.~~

<sup>48</sup> A list of channels required to provide access services is available on Ofcom’s website at [http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv\\_access\\_serv/](http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv_access_serv/). The targets applying to all these channels can be found in the most recent of the periodic reports published by Ofcom on its website at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/tv-access-services-reports/>.



**Table 1: Access services targets<sup>49</sup> for channels with larger audience shares**

<u>Anniversary of relevant date or notice date</u>	<u>Subtitling</u>	<u>Audio Description</u>	<u>Signing</u>
<u>First</u>	<u>10%</u>	<u>2%</u>	<u>1%</u>
<u>Second</u>	<u>10%</u>	<u>4%</u>	<u>1%</u>
<u>Third</u>	<u>35%</u>	<u>6%</u>	<u>2%</u>
<u>Fourth</u>	<u>35%</u>	<u>8%</u>	<u>2%</u>
<u>Fifth</u>	<u>60%</u>	<u>10%</u>	<u>3%</u>
<u>Sixth</u>	<u>60%</u>	<u>10%</u>	<u>3%</u>
<u>Seventh</u>	<u>70%</u>	<u>10%</u>	<u>4%</u>
<u>Eighth</u>	<u>70%</u>	<u>10%</u>	<u>4%</u>
<u>Ninth</u>	<u>70%</u>	<u>10%</u>	<u>4%</u>
<u>Tenth</u>	<u>80%</u>	<u>10%</u>	<u>5%</u>

**Domestic channels with smaller audience shares**

9B. Access service targets for domestic channels with smaller audiences – higher than the audience share threshold, but below the signing threshold (so-called ‘channels with smaller audience shares’) - are set out in Table 2 below<sup>50</sup>.

**Table 2: Access services targets for domestic channels with smaller audience shares**

<u>Anniversary of relevant date</u>	<u>Subtitling</u>	<u>Audio Description</u>	<u>Sign-presented programmes</u>
<u>First</u>	<u>10%</u>	<u>2%</u>	<u>30 minutes per month</u>
<u>Second</u>	<u>10%</u>	<u>4%</u>	<u>30</u>
<u>Third</u>	<u>35%</u>	<u>6%</u>	<u>30</u>
<u>Fourth</u>	<u>35%</u>	<u>8%</u>	<u>30</u>
<u>Fifth</u>	<u>60%</u>	<u>10%</u>	<u>45</u>
<u>Sixth</u>	<u>60%</u>	<u>10%</u>	<u>45</u>
<u>Seventh</u>	<u>70%</u>	<u>10%</u>	<u>60</u>
<u>Eighth</u>	<u>70%</u>	<u>10%</u>	<u>60</u>
<u>Ninth</u>	<u>70%</u>	<u>10%</u>	<u>60</u>
<u>Tenth</u>	<u>80%</u>	<u>10%</u>	<u>75</u>

<sup>49</sup> Expressed as a percentage of total non-excluded programming in a year; see paragraphs 13-15 for the definition of excluded programming for the purpose of access services regime.

<sup>50</sup> see footnote 48

10. Transitional arrangements signing for sign presentation requirements apply to all relevant domestic channels with smaller audience shares that have reached the fourth (or later) anniversary of their relevant date by 1 January 2016 (i.e. channels with a relevant date earlier than 1 January 2012) as set out in Table 23 below.

**Table 23: Transitional arrangements for signing obligations sign-presentation requirements** (for channels that have reached the fourth (or later) anniversary of their relevant date by 1 January 2016)

Year	2016	2017	2018	2019	2020	2021	2022
Minimum monthly sign-presentation obligations	30 minutes	35 minutes	45 minutes	50 minutes	60 minutes	65 minutes	75 minutes

**Non domestic channels with smaller audience shares**

- 10A. Access service targets for non-domestic channels with smaller audiences are set out in Table 4 below<sup>51</sup>. As regards signing, the requirement is to provide the amount of sign-presented programming referring to the anniversary. However, Ofcom may impose substitute requirements for signing, if it considers that these would better meet the needs of sign language users in the country concerned.

**Table 4: Access services targets for non-domestic channels with smaller audience shares**

<u>Anniversary of notice date</u>	<u>Subtitling</u>	<u>Audio Description</u>	<u>Sign-presented programmes</u>	<u>Substitute requirements for signing<sup>52</sup></u>	
				<u>Annual quotas for sign-interpretation</u>	<u>or Annual quotas for additional subtitling</u>
<u>First</u>	<u>10%</u>	<u>2%</u>	<u>30 minutes per month</u>	<u>1%</u>	<u>5%</u>
<u>Second</u>	<u>10%</u>	<u>4%</u>	<u>30</u>	<u>1%</u>	<u>5%</u>
<u>Third</u>	<u>35%</u>	<u>6%</u>	<u>30</u>	<u>2%</u>	<u>7.5%</u>
<u>Fourth</u>	<u>35%</u>	<u>8%</u>	<u>30</u>	<u>2%</u>	<u>7.5%</u>
<u>Fifth</u>	<u>60%</u>	<u>10%</u>	<u>45</u>	<u>3%</u>	<u>10%</u>
<u>Sixth</u>	<u>60%</u>	<u>10%</u>	<u>45</u>	<u>3%</u>	<u>10%</u>
<u>Seventh</u>	<u>70%</u>	<u>10%</u>	<u>60</u>	<u>4%</u>	<u>12.5%</u>
<u>Eighth</u>	<u>70%</u>	<u>10%</u>	<u>60</u>	<u>4%</u>	<u>12.5%</u>
<u>Ninth</u>	<u>70%</u>	<u>10%</u>	<u>60</u>	<u>4%</u>	<u>12.5%</u>
<u>Tenth</u>	<u>80%</u>	<u>10%</u>	<u>75</u>	<u>5%</u>	<u>15%</u>

<sup>51</sup> see footnote 48

<sup>52</sup> Subject to Ofcom's agreement to impose substitute requirements.

**Table 1: Access services targets**

Anniversary of relevant date or notice date	Subtitling	Signing		Audio Description
		Relevant channels <sup>53</sup> (monthly)	Other channels (annually)	
First	40%	30 minutes	1% of all non-excluded programmes	2%
Second	40%	30 minutes	1%	4%
Third	35%	30 minutes	2%	6%
Fourth	35%	30 minutes	2%	8%
Fifth	60%	45 minutes	3%	10%
Sixth	60%	45 minutes	3%	10%
Seventh	70%	60 minutes	4%	10%
Eighth	70%	60 minutes	4%	10%
Ninth	70%	60 minutes	4%	10%
Tenth	80%	75 minutes	5%	10%

11. *[moved to paragraph 8A, to make clear that it applies to all channels]* The targets represent minimum obligations and apply from each anniversary referred to in the case of Table 1, and for each calendar year as referred to in Table 2. In compliance with section 303(3) of the Communications Act, from the fifth anniversary, targets will apply on a rolling basis starting each week from one week after the date to which the previous annual average has been calculated.

### Excluded programmes

12. Ofcom may exclude programmes and services having regard, in particular, to:
- the extent of the benefit which would be conferred by the provision of the assistance for disabled people in relation to the programmes;
  - the size of the intended audience for the programmes;
  - the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
  - the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom ;

<sup>53</sup> Pending a review of the signing arrangements on relevant non-domestic channels, to take place in 2015, the signing obligations for these channels remain unchanged from the position as set out in paragraph 2.55 of Ofcom's statement on *Access services obligations for non-domestic channels*, published in October 2012 ([http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/statement/Non\\_dom\\_access\\_services.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/statement/Non_dom_access_services.pdf)).

- e) the technical difficulty of providing the assistance; and
- f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.

### Audience benefit

13. Having regard to these factors, television services are excluded from providing television access services if their share of viewing falls below the audience share threshold<sup>54</sup>. The audience share threshold for:
  - a) domestic television services is an average audience share of all UK households over a 12 month period ('audience share') of 0.05% or less;
  - b) non-domestic television services is the average audience share in the relevant EU Member State or States where the service is received over a 12 month period indicated in Annex 2.
14. Ofcom would expect to exclude television services from providing signing if they do not meet the relevant signing threshold. The signing thresholds for:
  - c) domestic television services is an average audience share of 1% or less;
  - d) non-domestic television services is the average audience share indicated in Annex 2.
15. Ofcom will consider, in the light of the factors set out above, whether or not channels with an audience share of slightly more than or slightly less than the signing threshold should be excluded.
16. Section 303(10)(c) of the Act allows Ofcom to impose alternative requirements with respect to the provision of assistance for disabled people in relation to any programmes or services it has excluded. In considering whether alternative requirements should be imposed on individual channels, it is open to Ofcom to take into account any voluntary arrangements entered into by broadcasters that would also meet the needs of sign-language users more effectively.
17. Having regard to this, Ofcom requires that relevant domestic channels with smaller audience shares (as defined in paragraphs 2(b) and (e)-(d) of this Code) should, from the first anniversary of the relevant date, broadcast each month no less than the minimum amounts of sign-presented<sup>55</sup> programming specified in Table 42, such programming to be shown between 7am and 11pm local time. Ofcom will keep this requirement under review.
- 17A. Having regards to the matters set out in paragraph 16, Ofcom requires that non-domestic channels with smaller audience shares (as defined in paragraph 2(c) and (e) of this Code) should, from the first anniversary of the notice date, broadcast each

<sup>54</sup> The provisions in paragraphs 17 to 18 apply to television services that are required to provide access services (otherwise than by reason of the provisions in paragraphs 13 to 15) including those that have been exempted in the circumstance described in paragraph 7, which have had different targets applied to them.

<sup>55</sup> Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

month no less than the minimum amount of sign-presented<sup>56</sup> programming specified in the third column of Table 4, unless Ofcom has determined that the regulatory requirements (sign-interpretation and extra subtitling) summarised in the fourth and fifth columns of Table 4 would better meet the needs of sign language users in the country concerned. Ofcom will keep this requirement under review.

18. Broadcasters may, if they wish, propose alternatives to the arrangements set out in paragraphs 17 and 17A, and Ofcom will consider these in the light of the factors set out in paragraph 12, the needs of people with hearing impairments and the guidance set out in Annex 3 to the Code. Further guidance on this is set out in Annex 3 to the Code.
19. To aid planning for broadcasters not currently required by reason of audience share or revenue to provide television access services, Ofcom will carry out a mid-year review based on corresponding data for revenue and audience shares, and will publish a statement indicating which channels will be required to provide access services (see paragraph 30 below) in the following year<sup>57</sup>.
20. In the event that the audience share of a television service currently required to provide television access services falls below the threshold in two successive quarters, Ofcom will notify the broadcaster that the obligation will discontinue at the end of the calendar year in question.
21. Television services intended for reception by members of the public outside the European Union are exempt from television access service requirements.

## Technical difficulty

22. Television access services need not be provided if Ofcom is satisfied that this would be impracticable on grounds of technical difficulty, including the following cases:
  - a) audio description of music and news programmes and services, where there is little space within the dialogue/sound track to provide audio description, and less need. However, broadcasters are required to ensure that producers, editors and presenters are trained in techniques to describe the significance of images for the benefit of the blind and partially-sighted audience. Broadcasters are required to provide a statement of the training they are providing within 12 months of becoming subject to the code;
  - b) provision of subtitling that is not supported by commercially-available set top boxes (e.g. Chinese or Urdu); and
  - c) provision of access services where a service is broadcast with several different language feeds, making the choice of language for access services problematic.

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<sup>56</sup> see footnote 55

<sup>57</sup> Those channels whose relevant date falls before the end of a calendar year will be expected to start providing access services from the anniversary of that date, subject to meeting the audience threshold, unless they can demonstrate that they would be unable to meet the cost of Level 3 (or higher) obligations from 1% of their actual or projected relevant turnover.

## Cost

23. Ofcom has determined average costs per hour of providing programming with subtitling, signing and audio description, including any alternative requirements imposed in accordance with paragraphs 17 and 17A. These have been used to calculate the costs of three levels of provision:
  - a) Level One equates to the full current annual targets for subtitling, signing and audio description, as well as any alternative requirements;
  - b) Level Two equates to 66% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description, and any alternative requirements; and
  - c) Level Three equates to 33% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description and any alternative requirements.
24. In determining the applicable costs for each channel, Ofcom will have regard to the number of hours broadcast each day, the proportion of the schedule that is exempted from the provision of one or more access services, and the percentage of repeats.
25. Broadcasters whose services are not otherwise excluded will be required to achieve the highest Level of provision they can afford within a budget equating to 1% of their 'relevant turnover'<sup>58</sup>. Only broadcasters unable to afford Level Three costs will be exempt from provision altogether on grounds of cost.
26. In determining the applicable amount of relevant turnover, Ofcom will have regard to the most recent declarations of relevant turnover.
27. In the case of channels in common ownership<sup>59</sup>, Ofcom will determine which channels that are not otherwise excluded should provide television access services by averaging the total relevant turnover across all services in common ownership. If this means that each of the channels would have an average relevant turnover which would enable it to meet one of the three Levels at a cost of 1% or less of that average relevant turnover, those channels will be required to provide the relevant Level of television access services. If the averaging of relevant turnover would mean that none of the services would need to provide television access services, Ofcom will assess eligibility on the basis of the individual relevant turnover attributable to each service.
28. Services which meet the 1% threshold in the most recent declarations of relevant turnover before the start of the next calendar year will be required to provide television access services at the appropriate level for the whole of the next calendar year.

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<sup>58</sup> As defined in Ofcom's Statement of Charging Principles, 8 February 2005. ([www.ofcom.org.uk/consult/condocs/socp/main/?a=87101](http://www.ofcom.org.uk/consult/condocs/socp/main/?a=87101)).

<sup>59</sup> For the purpose of the Code, Ofcom will treat a channel as being in common ownership with one or more other channels if each channel is a subsidiary (within the meaning of the Companies Act 1985) of a common holding company or if they share a common parent at any point in the chain of ownership which has a majority interest in each. In determining whether channels are in common ownership, Ofcom will also have regard to other relevant factors of the kind set out in Ofcom's Guidance on the definition of control of media companies (<http://stakeholders.ofcom.org.uk/consultations/media2/statement/>).

## Other exclusions

29. Other television services excluded by section 303 of the Communications Act 2003 from the requirement to provide television access services are:
- a) those comprising advertising only, for example, a shopping channel;
  - b) electronic programme guides; and
  - c) those licensed outside the United Kingdom.

## Changes in audience share and relevant turnover

30. Ofcom will conduct a mid-year review of the audience share and relevant turnover of channels licensed in the United Kingdom, based on the most recent four quarters for which corresponding data is available. Ofcom will notify the licensee, if on the basis of that review Ofcom considers that a channel is likely, in the following year, to become:
- a) subject to a requirement to provide television access services;
  - b) subject to a different Level of provision; or
  - c) excluded from the requirement to provide television access services.
31. If a mid-year review indicates that the audience share of a television service providing television access services has fallen below 0.05% but remains at 0.04% or above, and this is confirmed by figures for the subsequent quarter, the licensee will be required to maintain the existing level of provision in the following year, against the targets applying in the current year. In the event that the average audience share remains below 0.05% in the following year, the requirement to provide television access services will cease at the end of that year, or earlier if the licensee demonstrates to Ofcom's satisfaction that continuation of the obligation would threaten the viability of the service.
32. If a service that ceases to be required to provide television access services subsequently regains the levels of audience share and / or qualifying revenue that would subject it to the requirement once more, the licensee will be required to resume provision at the appropriate Level described in paragraph 23 above. Ofcom will determine which level of annual target should apply in consultation with the licensee.
33. If, at any time, a licensee demonstrates to Ofcom's satisfaction that continuation of access service obligations would threaten the viability of its service, Ofcom may reduce, suspend or terminate those obligations.

## Presentational and technical standards

34. Broadcasters are required to observe the standards set out in the Guidelines on Television Access Service Standards in Annex 4 to the code.
35. There are currently no technical standards for the means by which Television Access Services are to be made available to viewers. However, Ofcom expects television service providers to use reasonable endeavours to ensure that such television



access services can be accessed by the greatest number of viewers in their homes (whether they receive their services by terrestrial signal, or by satellite or cable).

## Promotion of awareness

36. Ofcom requires television service providers to promote awareness of the availability of their television access services to potential users of the services by making available accurate and timely information to electronic programme guide (EPG) operators listing their services, and by providing similar information on their website. Ofcom has imposed corresponding obligations on EPG operators through the EPG code made under section 310 of the Act. Broadcasters who provide programme synopses for use in EPGs should indicate which programmes are accompanied by television access services by including the standard upper-case acronyms for subtitling (S), audio description (AD) and signing (SL). Where broadcasters provide access services to other countries, they should endeavour to use the indicators for access services used in those countries.
37. Ofcom will also expect television service providers to demonstrate that they are taking effective steps to publicise awareness of their television access services through other means, including periodic on-air announcements and information in publications aimed at persons likely to benefit from television access services. Where the nature of the access service is not spelt out in full, the standard abbreviations referred to in paragraph 36 above should be used.

## Programming and scheduling

38. Ofcom expects that broadcasters will normally schedule programming with subtitling and audio description at peak viewing times for each channel. However, as signing is currently only provided in open format, it is accepted that signed programmes may need to be shown outside peak viewing hours (subject to paragraphs [17](#) and [17A](#) above) and recorded by viewers with hearing impairments. In selecting programmes for which access services are to be provided, broadcasters should seek advice from disability groups about how best to maximise the benefits to the blind and those with visual impairments, to the deaf and hard of hearing, and to the deafblind. Ofcom encourages broadcasters not to seek to fulfil their obligations by scheduling multiple repeats of programmes, as this will detract from the benefit of providing access services to users.

## Equal Opportunities legislation

39. Broadcasters will need to have regard to their obligations under equal opportunities legislation, including the need to make reasonable adjustments in the delivery of services so as to make these accessible to disabled people, and should seek their own advice on this.

## Monitoring and compliance

40. Broadcasters to whom this code applies:
  - a) are required to submit returns for each six month period covering quarters starting from 1 January 2005, in the form and format to be notified separately by Ofcom; and



- b) shall make and retain a recording in sound and vision in a form acceptable to Ofcom of every programme included in the service for a period of 60 days from the date of its broadcast, and provide a copy of the recording for examination and reproduction on request by Ofcom.

## **Review**

- 41. This code is subject to periodic review.

## Annex 5

# Proposed amendments to Ofcom's guidance

[proposed deletions are scored through; proposed additions are underlined. Explanatory comments are shown in italics; they do not form part of the Guidance]

## Ofcom's guidance to broadcasters of ~~relevant~~ channels with smaller audiences on arrangements for signing

### Introduction

"A3.1 This Annex to the Code on Television Access Services ('the Code') sets out guidance for broadcasters of ~~relevant domestic and non-domestic~~ channels with smaller audience shares on signing on television. ~~Relevant channels with smaller audience shares~~ are those which:

- a) are required as a result of Ofcom's mid-year review to be subject to access service obligations in the following year;
- b) are determined by Ofcom to have had an average audience share ~~of all UK households~~ over the preceding year below the signing threshold as set out in Annex 2 to the Code of less than 1%; and
- c) are excluded under section 303(9) of the Communications Act from the targets set out in paragraph 7 of the Code on Television Access Services ('the existing obligations').

A3.2 Ofcom expects to notify broadcasters of ~~relevant~~ channels with smaller audience shares (subject to the timely provision by them of information on relevant turnover<sup>60</sup>) by 31 May each year that, as a result of the mid-year review, they will be subject to the arrangements applying to channels with an audience share below the signing threshold of less than 1%. For advance planning purposes, broadcasters currently subject to obligations under the Code on Television Access Services that spend less than 1% of the relevant turnover of relevant channels on access services should work on the premise that they will be excluded from the existing obligations and will be required to meet the new requirements described below.

### Regulatory requirements

A3.3 From 1 January 2016, and in accordance with section 303(10)(c) of the Communications Act 2003, ~~relevant domestic~~ channels with smaller audience shares should, from the first anniversary of the relevant date, broadcast each month

<sup>60</sup> As part of their annual information return, non-PSB licensees are required to provide data on relevant turnover for the previous year by 31 March. In accordance with the Code on Television Access Services, Ofcom will use this data together with audience share data to assess which channels will be required to provide television access services in the following year. Ofcom will aim to notify relevant channels by 31 May. Broadcasters that do not provide information on their relevant turnover by the time requested may have less notice of whether or not some or all of their channels will be subject to access service requirements.

no less than the minimum amounts of sign-presented programming specified in Table 4 ~~2~~ of the Code on ~~Television Access Services~~, such programming to be shown between 7am and 11pm local time. Ofcom will keep this requirement under review.

- A3.3A From 1 January 2017, and in accordance with section 303(10)(c) of the Communications Act 2003, non-domestic channels with smaller audience shares should, from the first anniversary of the notice date, broadcast each month no less than the minimum amounts of sign-presented programming specified in the third column of Table 4 of the Code, unless Ofcom has determined that regulatory requirements (sign-interpretation and extra subtitling) summarised in the fourth and fifth columns of Table 4 of the Code would better meet the needs of sign language users in the country concerned. Ofcom will keep this requirement under review.
- A3.4 Broadcasters of ~~relevant~~ both domestic and non-domestic channels with smaller audience shares who wish to propose that ~~they~~ the channels should not be subject to these regulatory requirements should follow the procedures below.

## Alternative arrangements

- A3.5 Ofcom will consider proposals from individual broadcasters or groups of broadcasters of ~~relevant~~ both domestic and non-domestic channels with smaller audience shares for alternative ways of achieving the objective of making more ~~sign-presented programming~~ accessible programming<sup>61</sup> available to deaf or hearing-impaired sign language users. Broadcasters are not obliged to propose alternative arrangements. Nor is Ofcom required to accept that the proposal by broadcasters of any alternative arrangements will result in Ofcom not imposing the regulatory requirements. In deciding whether or not to impose the regulatory requirements in A3.3 or A3.3A on broadcasters that have submitted alternative proposals, Ofcom will have regard to the matters set out in A3.7 (a)-(e) below.
- A3.6 Broadcasters may discuss possible alternative arrangements for ~~relevant~~ channels with smaller audience shares with Ofcom in advance of a formal proposal, and Ofcom encourages them to do so. In any case, in order that broadcasters and / or third parties have sufficient time to plan for the implementation of alternative arrangements, they should submit proposals no later than 30 June in the year before they wish to implement them. If they do not submit proposals by this date, broadcasters are likely to be obliged to implement the regulatory requirements set out in A3.3 or A3.3A, as appropriate. Provided the proposals contain sufficient information, Ofcom will endeavour to decide whether or not to impose the regulatory requirements by 31 July.
- A3.7 In determining whether the regulatory requirements should be imposed on broadcasters that have proposed alternative arrangements, Ofcom will consider whether the alternative arrangements would be likely to provide better assistance for deaf people using sign language, and in particular whether they would:
- a) contribute to a diversity of ~~sign-presented~~ accessible programming broadcast between 7am and 11pm;

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<sup>61</sup> Accessible programming in this context means programming with the type of assistance that Ofcom has deemed appropriate, whether that is sign presentation, sign interpretation or subtitling. In the case of the UK, Ofcom has deemed sign presentation to be the form of accessible programming appropriate (see paragraph 1.21 of Ofcom's 2007 Statement).

- b) incorporate effective mechanisms for taking account of the views of deaf groups about the preferences of deaf people for accessible programming;
- c) ensure that the terms of access to programming are no less favourable to sign language users than access to the channel in respect of which alternative arrangements are proposed;
- d) amount to, or be equivalent to, an annual financial contribution in respect of each relevant channel, as set out in Table 52. This amount is subject to review from time to time; and
- e) commit the broadcaster to implement the arrangements or to contract with an acceptable party to implement the arrangements for a period of not less than two years, subject to a provision allowing the channel to discontinue the arrangements if it ceases to be subject to access service obligations.

**Table 52: Minimum annual contributions to alternative signing arrangements**

<b>Anniversary of relevant date or notice date</b>	<b>Minimum annual contributions to alternative arrangements</b> (from 1 January 2016, <u>subject to annual adjustments for inflation<sup>62</sup></u> )
First	£24,500
Second	£24,500
Third	£24,500
Fourth	£24,500
Fifth	£36,800
Sixth	£36,800
Seventh	£49,100
Eighth	£49,100
Ninth	£49,100
Tenth <u>and after</u>	£61,400

A3.8 The minimum annual contribution levels provided in Table 52 above apply to all channels that have not yet reached the fourth (or later) anniversary of their relevant date (i.e. channels with a relevant date on or later than 1 January 2012). Ofcom will publish inflation-adjusted minimum contribution levels for the following year at the same time as it publishes the annual list of channels required to provide television access services in the following year.

<sup>62</sup> The minimum annual contribution levels shown in this table are expressed in 2014 money; from 2016 onwards, Ofcom will publish inflation-adjusted minimum contribution levels for the following year at the same time it publishes the annual list of channels required to provide television access services in the following year.

A3.9 Domestic channels with a relevant date earlier than 1 January 2012 are subject to the transitional arrangements set out in Table 63 below. There are no equivalent transitional arrangements for non-domestic channels.

**Table 63: Transitional arrangements for certain domestic channels: minimum annual contributions towards alternative arrangements (in lieu of monthly signing sign-presentation requirements)** (for domestic channels that have reached the fourth<sup>63</sup> - or later - anniversary of their relevant date)

Anniversary of qualifying date	2016	2017 <sup>64</sup>	2018	2019	2020	2021	2022 and after
Minimum annual contributions	£24.5k	£28.6k	£36.8k	£40.9	£49.1k	£53.2	£61.4k

A3.10 From 2022 onwards, the minimum annual contributions to approved alternative arrangements will be £61,400 (in 2014 money), adjusted annually to account for inflation from December 2014.

A3.11 The level of minimum annual contribution is subject to review.

A3.12 A broadcaster that has, in good faith and with Ofcom's agreement, contracted for the alternative arrangements – in lieu of the signing requirements imposed on one or more of its domestic or non-domestic channels – to be implemented by a third party shall not be required to resume the implementation of regulatory requirements set out in the Code for the duration of the paid-for period of the contract, even if the third party fails to fulfil the requirements of the contract. [This paragraph formed part of the original Guidance but was inadvertently omitted from the revised version]

<sup>63</sup> i.e. channels with a relevant date earlier than 1 January 2012

<sup>64</sup> From 2016 onwards, Ofcom will publish inflation-adjusted minimum contribution levels for the following year at the same time it publishes the annual list of channels required to provide television access services in the following year.

## Annex 6

# Analysis of financial impact on broadcasters

## Introduction

- A6.1 This Annex, together with the broader assessment of our policy options set out in the remainder of this consultation document, provides an assessment of the financial implications of Ofcom's proposals:
- a) to bring signing arrangements for non-domestic channels licensed by Ofcom for transmission to other Member States of the European Union (EU) into line with the arrangements applying to domestic channels; and
  - b) to regulate from 1 January 2017 the provision of access services (including subtitling, signing and audio description) by non-domestic channels serving those member states of the European Economic Area (EEA) to which the European Union's Audiovisual Media Services Directive now applies in the same way as non-domestic channels transmitted in EU Member States.
- A6.2 With regard to paragraph A6.1(a), we discuss below the potential impact of four scenarios, in which broadcasters meet their obligations with:
- a) sign-presented programming; or
  - b) sign-interpreted programming; or
  - c) extra subtitling (over and above that required to meet subtitling quotas intended for people with hearing impairments who do not use sign language); or
  - d) financial contributions to alternative arrangements of sign-interpreted, sign-presented or subtitled programming.
- A6.3 The minimum requirements Ofcom is proposing for each of these scenarios is summarised in the table at Figure 6 below.

**Figure 6: Levels of proposed requirements, substitute requirements, and contributions to alternative arrangements**

		Signing (from anniversary of notice date)	1 <sup>st</sup> to 2 <sup>nd</sup>	3 <sup>rd</sup> to 4 <sup>th</sup>	5 <sup>th</sup> to 6 <sup>th</sup>	7 <sup>th</sup> to 9 <sup>th</sup>	10 <sup>th</sup> onwards
1	Statutory obligations	<b>Sign-interpretation / Sign Presentation</b> (for reference purposes only)	1% of output	2%	3%	4%	5%
2	Proposed requirements	<b>Sign-presentation</b>	30' x 12 (30' a month)	30' x 12	45' x 12	60' x 12	75' x 12
3	Substitute requirements	<b>Sign-interpretation</b>	1% of output	2%	3%	4%	5%
4		<b>Extra subtitling</b>	5%	5%	7.5%	10%	12.5%
5	Alternative arrangements	<b>Contributions to alternative arrangements*</b>	£24.5k	£24.5k	£36.8k	£49.1k	£61.4k

\*2014 prices, subject to annual adjustment in line with CPI.

A6.4 With regard to paragraph A6.1(b), we discuss the potential impact of regulating access services requirements to non-domestic channels targeting EEA States, in light of our proposals with respect to signing (to start from 2017).

A6.5 In order to protect broadcasters from disproportionate burdens, no changes are proposed to the 1% expenditure cap, described in paragraphs A6.8 to A6.10 below.

## Background

A6.6 Following consultation in 2004, Ofcom concluded that it was not appropriate for it to assess Parliament's decisions in relation to access services on a cost-benefit basis<sup>65</sup>. The task was to give effect to Parliament's instructions in ways that avoided disproportionate burdens on broadcasters. In setting signing obligations, Parliament was aware that that there was only a small population of BSL users but still imposed increasing sign interpretation requirements.

A6.7 In 2004, Ofcom decided that:

- a) only channels with an audience share of at least 0.05% offered sufficient benefit to access service users to warrant provision of access services; channels with a lower share are therefore exempt and do not have to provide them; and

<sup>65</sup> *Code on Television Access Services (Statement)*, Ofcom, 26 July 2004

- b) only channels that would spend no more than 1% of relevant turnover should be required to provide access services ('the 1% expenditure cap'). In other words, as long as the cost to the broadcasters remained within this limit, the cost was not disproportionate.
- A6.8 Furthermore, most qualifying broadcasters operate numerous channels. Following consultation, Ofcom decided in 2004 that, in order to assess whether channels that would qualify on audience share grounds could afford to meet their access service obligations, it would look at the average relevant turnover of those channels in common ownership. In doing so, Ofcom noted that it was reasonable to assume that access service provision would be commissioned at the corporate rather than channel level. This approach also avoids the possibility that broadcasters could avoid obligations through transfer pricing (i.e. moving revenues between channels).
- A6.9 If the average relevant turnover of channels in common ownership qualifying on audience share grounds exceeds 1%, the calculations are performed again, this time assuming that subtitling targets are reduced by one third, or if necessary two thirds. If average relevant turnover still exceeds 1%, the channel with the lowest relevant turnover is excluded. If necessary, additional channels can be eliminated to arrive at the number that can afford to provide access services by spending no more than 1% of relevant turnover<sup>66</sup>.
- A6.10 When applying and estimating the cost associated with the signing arrangements for relevant channels, the 1% expenditure cap still applies and therefore ensures that the access services obligations placed upon broadcasters are not disproportionate. To reiterate, the 1% cap and the methodology Ofcom uses to apply the 1% cap, are not part of this consultation. These remain unchanged and protect broadcasters from disproportionate access services costs.

## Approach

- A6.11 We have considered the effect of the different signing requirements on the 39 non-domestic channels that will be under an obligation to provide access services in 2016, and the broadcasters who own them. Our proposals would affect those channels required to provide access services from 2017 onwards, but this list will not be determined until mid-2016 when full year data on revenues and audiences share data for 2015 is available.
- A6.12 Clearly, there are a number of factors relevant to determining access service obligations that may vary in future, including the audience share and relevant turnover of individual channels, as well as the costs of providing access services. However, how these factors might change cannot be predicted. For the purposes of the analysis, we have assumed that:
- a) all broadcasting revenues and all costs related to the provision of access services would remain constant in real terms, consistent with the approach Ofcom took to

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<sup>66</sup> Code on Television Access Services, May 2015, Ofcom (<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2015/>); paragraphs 26-27



assessing the impact of analogous changes to signing obligations for UK channels<sup>67</sup>;

- b) the audience share of individual channels would remain unchanged, and all those channels that might currently be eligible to provide access services would continue to exist;
- c) the provision of signing would have no impact on relevant channels' revenues. In the case of sign-interpretation, we note that this could be scheduled at times when little or no advertising revenue was at stake (as happens in the UK). The amount of sign-presentation (a maximum of 75 minutes a month) would be unlikely to have a significant impact on advertising or subscription revenues. Additional subtitling would either be provided as language subtitling, or selected at the option of the viewer (so-called 'closed subtitling'), so would not have an adverse effect on non-access service users;
- d) there would be no significant additional overheads. The information provided by broadcasters suggests that most overheads are related to specialist equipment needed to produce and ingest subtitling and audio description, as well as supervisory costs. Ofcom's understanding, on the basis of signing in the UK, is that it does not require specialist equipment, and that, once supervisory resources have been allocated for ensuring compliance with subtitling and audio description obligations, it is unlikely that significant additional resources would be required for ensuring compliance with signing obligations; and
- e) as access services quotas rise over time, so does the amount of subtitled, audio-described and signed content that the broadcasters are able to repeat from one year to the other. In other words, broadcasters would accumulate a 'stock' of subtitled or audio-described or signed programming which they can use to fulfil their access services quotas. We use data from broadcasters on first-run programming to calculate the repeat rates for each channel

A6.13 Finally, we have assumed that broadcasters would not choose to exceed the minimum requirements summarised in Figure 6 above.

A6.14 For reasons of commercial confidentiality, we are not including estimates of the impacts on individual channels or broadcasters, although both have been estimated and considered. Instead, we are including anonymised estimates of the proportion of relevant turnover that broadcasting groups would have to pay for access services.

A6.15 For the reasons given in paragraphs 4.30 to 4.33 of the main document, we have assumed that domestic channels that are also made available in the Republic of Ireland will not have to bear the cost of additional signing obligations.

A6.16 We discuss below the estimated impact of our proposals summarised in paragraphs A6.2-A6.3 under the following scenarios:

- a) Scenario 1: all relevant non-domestic channels provide **sign-presented programming** subject to the proposed requirements;

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<sup>67</sup> See Annex 4 to Changes to signing arrangements for domestic television channels, Ofcom, May 2015 (<http://stakeholders.ofcom.org.uk/binaries/consultations/review-signing-arrangements-tv/statement/statement.pdf>). In practice, we did not consider it necessary to forecast inflation as the same rate would apply to both costs and revenues, and it would not alter the ratio between access services costs and revenues which our assessment rests on.

- b) Scenario 2: all relevant non-domestic channels provide minimum amounts of **sign-interpreted programming**;
- c) Scenario 3: all relevant non-domestic channels provide **extra subtitling** (over and above that required to meet subtitling quotas intended for people with hearing impairments who do not use sign language); and
- d) Scenario 4: all relevant non-domestic channels pay **contributions to alternative arrangements for the provision** of sign-interpreted, sign-presented or subtitled programming.

## Scenario 1: sign-presented programmes

A6.17 In this scenario, we examine the estimated impact on relevant non-domestic channels in a scenario where all show minimum amounts of sign-presented programmes rising from 30 minutes per month to 75 minutes per month by the tenth anniversary of the notice date (1 January 2013), as indicated in the table shown in Figure 7 below. Under Ofcom’s proposals, this would be the requirement under section 303(10)(c) of the Act. In 2017 all these channels would be required to show a minimum of 30 minutes of sign-presented programming per month, and would reach the maximum target of 75 minutes per month in 2023. It should be noted that is unlikely that Ofcom would approve this arrangement if it was likely to result in costs rising to the point where many channels were exempted from the provision of access services on grounds of affordability.

**Figure 7 – Proposed sign-presentation monthly targets**

<i>Anniversary of Notice Date</i>	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	≥10 <sup>th</sup>
<b>Minimum Monthly Amount of Sign-Presented Programmes</b>	30 mins	30 mins	30 mins	30 mins	45 mins	45 mins	60 mins	60 mins	60 mins	75 mins

A6.18 We do not have data on the costs of producing sign-presented programmes in other Member States of the EU. Accordingly, we have estimated these costs (in the same way as for sign-interpretation<sup>68</sup>) using the UK costs as the starting point. The cost of meeting the minimum sign-presentation requirements (30 minutes a month) is estimated to be £74k in 2014 money.<sup>69</sup>

A6.19 Furthermore, we note that the provision of access services is a labour-intensive service. Hence, we consider it a reasonable simplification to assume that the cost of signing differs from one country to another in line with overall labour cost differences.

<sup>68</sup> See paragraphs A6.27-29 below

<sup>69</sup> In 2007, data from the Community Channel indicated that the annual cost of producing two 30-minute sign-presented programmes and showing each six times per year – thus meeting the minimum sign-presentation requirements set at the time – was about £60,000<sup>69</sup> in the UK. Indexing this for inflation using CPI, the equivalent cost in 2014 would be almost £74k. See paragraph A4.15 in *Changes to signing arrangements for relevant domestic channels*, Ofcom, May 2015 (<http://stakeholders.ofcom.org.uk/binaries/consultations/review-signing-arrangements-tv/statement/statement.pdf>)

A6.20 We used Eurostat data on total hourly labour costs in 2014 to derive the percentage difference between labour costs in the UK and other member states. We then applied the differential to the UK cost of sign interpretation to estimate the cost of sign interpretation in each member state, as we considered that this might offer a reasonable indication of how sign-presentation costs might vary from one country to another. Using this approach, we have derived the results for sign-presentation shown in the table at Figure 8 below. In this scenario, in 2017 all the non-domestic channels would be required to provide a minimum of 30 minutes per month of sign-presented programmes on their channels, and would reach the maximum target of 75 minutes per month in 2023.

**Figure 8 – Estimated costs of sign presentation in different EU Member States (costs and estimates shown in 2014 money)**

Country	Percentage difference in labour costs	Estimated annual costs of sign-presentation <sup>70</sup>		
		2017	2019	2023
<b>UK</b>	-	£73,900	£110,850	£184,750
<b>Denmark</b>	80.55%	£133,424	£200,136	£333,560
<b>France</b>	55.00%	£114,545	£171,818	£286,363
<b>Hungary</b>	-67.14%	£24,280	£36,420	£60,700
<b>Italy</b>	26.85%	£93,741	£140,612	£234,353
<b>Netherlands</b>	52.58%	£112,755	£169,132	£281,887
<b>Poland</b>	-62.44%	£27,758	£41,637	£69,395
<b>Sweden</b>	67.55%	£123,818	£185,727	£309,545

A6.21 We have used these estimates in an assessment of the impact that sign-presentation costs would have on overall access service costs.

A6.22 For reasons of commercial confidentiality, it would not be appropriate to publish the results for each channel or broadcasting group. Instead, Figure 9 shows the distribution of access services costs by broadcaster group. Costs are shown as a proportion of the aggregate relevant turnover of channels within a broadcaster group. Only the relevant turnover attributable to channels with access service obligations is included. In summary:

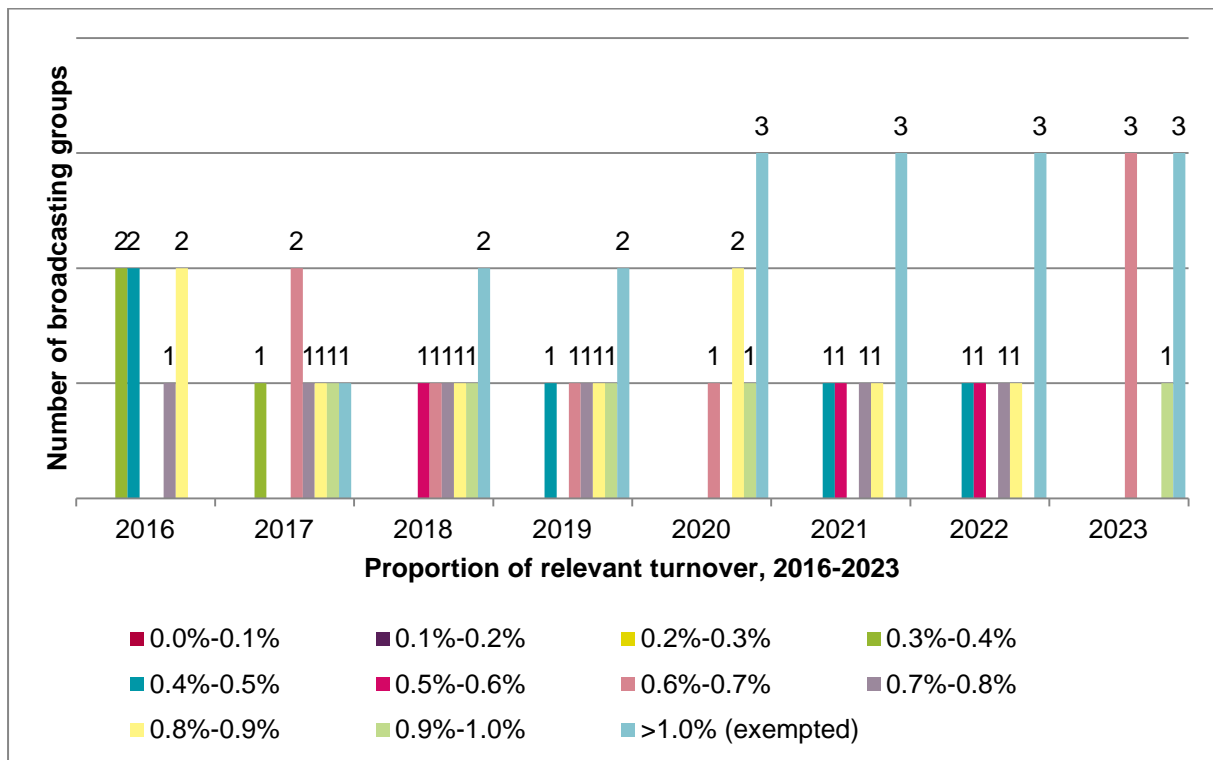
- a) in 2016, the base year, on the basis of the subtitling and audio description quotas faced by non-domestic channels in 2016, and given that all of these channels have chosen to meet their signing obligations by showing extra subtitling during the transitional period, we estimate that four broadcasting groups will pay between 0.2% and 0.5% of their relevant turnover on access services, one group is estimated to pay between 0.5% and 0.8%, and two groups between 0.8% and 1%;
- b) in 2017, the first year these channels would be showing sign-presented programmes, we estimate that one broadcasting group would pay between 0.2% to 0.5% of their relevant turnover on access services, three groups would pay

<sup>70</sup> Assumes that broadcasters produce two 30 minute programmes, and repeat them six times. Broadcasters often schedule frequent repeats of programmes. Repeat rates vary, but six times is not uncommon.

between 0.5% and 0.8%, and two groups between 0.8% and 1%; furthermore, one broadcasting group would be exempted from access services requirements on the grounds of affordability;

- c) in 2019, we estimate that one broadcasting group would pay between 0.2% to 0.5% of their relevant turnover on access services, two groups would pay between 0.5% and 0.8%, and two groups between 0.8% and 1%; two groups would be exempted from access services requirements on the grounds of affordability; and
- d) by 2023, when the maximum targets are reached by all channels currently required to provide access services, we estimate that three groups would pay between 0.5% and 0.8%, and one group would pay between 0.8% and 1%, while a total of 3 broadcasting groups would be exempted from access services obligations on grounds of affordability.

**Figure 9: Impact on total access services costs for broadcasters of sign-presentation**



A6.23 We estimate that the cumulative average expenditure on access services would increase as a result of this policy, from 0.58% of aggregate relevant turnover in 2016 to 0.69% in 2023, when the signing obligations reach their highest level.

A6.24 We also assessed the potential impact on individual channels. In summary, should every channel provide sign-presented programmes in order to meet its signing obligations, we estimate that 21 of the 39 non-domestic channels would be exempted from access services by 2023.

A6.25 Finally, although we consider that labour costs offer a reasonable indication of how sign-presentation costs might vary from one country to another, we have tested the impact of our proposed policy under the assumption that this methodology results in an underestimation of the costs of sign presentation. As the table in Figure 10 below shows, although upward adjustments of the estimated cost of sign presentation by

10% or 20% do not result in a lower number of channels being required to provide access services by 2023, the estimated overall cost of providing access services would rise. Conversely, if our current estimate of the cost of providing sign presentation is an overestimation, the number of channels required to provide access services would be higher.

**Figure 10: Effects of higher or lower than estimated costs of sign presentation**

Country	Average difference in labour costs	Effects of lower or higher costs than estimated costs				
		-20%	-10%	Central estimate	+10%	+20%
Denmark	80.55%	£106,739	£120,082	£133,424	£146,767	£160,109
France	55.00%	£91,636	£103,091	£114,545	£126,000	£137,454
Hungary	-67.14%	£19,424	£21,852	£24,280	£26,708	£29,136
Italy	26.85%	£74,993	£84,367	£93,741	£103,116	£112,490
Netherlands	52.58%	£90,204	£101,479	£112,755	£124,030	£135,306
Poland	-62.44%	£22,206	£24,982	£27,758	£30,534	£33,310
Sweden	67.55%	£99,054	£111,436	£123,818	£136,200	£148,582
Number of channels required to provide access services in 2023		21	17	16	16	16
Number of countries served by qualifying channels		5	5	5	5	5
% of relevant turnover spent on access services		0.79%	0.66%	0.69%	0.74%	0.79%

## Scenario 2: sign-interpretation

A6.26 In this scenario, we estimate the impact on non-domestic channels if all of them are subject to the substitute requirements to provide sign interpretation on a proportion of their programming rising from 1% to 5% by the tenth anniversary of the notice date (1 January 2013), as indicated in the table shown in Figure 11 below. Under Ofcom's proposals, this would be the substitute requirements in lieu of the proposed requirements set under section 303(10)(c) of the Act. In 2017 all these channels would be required to provide signing on 2% of their programming, and would reach the maximum target of 5% in 2023.

**Figure 11 – Signing targets expressed as percentage of total programming**

Anniversary of Notice Date	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	≥10 <sup>th</sup>
Signing Quota	1%	1%	2%	2%	3%	3%	4%	4%	4%	5%

A6.27 For the purpose of assessing the affordability of access service requirements, we collected data on the costs incurred by broadcasters of non-domestic channels in 2014. Specifically, broadcasters provided us with data on:

- a) the percentage of their subtitling quota that was met by language subtitling<sup>71</sup> in 2014;
- b) the hourly cost of producing hard-of-hearing subtitling;
- c) the hourly cost of producing audio description;
- d) the annual cost of the spectrum capacity required for the provision of audio description;
- e) the initial capital expenditure required for the provision of access services; and
- f) recurring overheads related to the provision of access services.

A6.28 This data, which relates to the actual costs incurred by broadcasters of channels required to provide access services in 2014, was aggregated by Ofcom to estimate the different average costs of providing access services in each of the Member States of the EU.

A6.29 This data did not include signing costs, as none of them was providing signing at the time. For the UK, the most up-to-date data we have (2013) suggests the direct costs of providing sign interpretation in the UK are slightly less than £450 per hour.

A6.30 Ofcom is aware that a limited amount of sign-interpreted programming is made available in other EU Member States, usually on one or two public service channels, rather than commercial channels. Ofcom asked the relevant national regulatory authorities whether they hold information on the hourly cost of providing sign interpretation on television in their countries, but their responses indicated that it would not be possible for Ofcom to obtain this information from them.

A6.31 Hence, in order to estimate the cost of sign interpretation in other EU Member States, we have used the same approach as for sign presentation, i.e. we have applied the differential in total hourly labour cost between the UK and other EU Member States to the hourly cost of providing sign interpretation in the UK. We consider this to be a reasonable simplification on the basis of the fact that the provision of sign interpretation is a labour-intensive service<sup>72</sup>. The results can be seen in the right-hand side column of the table in Figure 12 below.

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<sup>71</sup> That is, subtitling the main purpose of which is the translation of the programme into another language, as opposed to hard-of-hearing subtitling, which is used for the main purpose of making the programming accessible to hearing-impaired viewers.

<sup>72</sup> 'In-vision' signing, in particular, usually requires a sign language interpreter, a camera and a 'green room' where the interpretation is shot and then edited in the original video. See, for example: <http://remark.uk.com/remark/translation/services/bsl%20translation/in-vision%20and%20signing>

**Figure 12 – Estimated costs of sign interpretation in different EU Member States**

Country	Percentage variation in labour costs	Estimated cost of sign interpretation (£/hr)
<b>UK</b>	-	£455 <sup>73</sup>
<b>Denmark</b>	+80.55%	£822
<b>France</b>	+55.00%	£706
<b>Hungary</b>	-67.14%	£150
<b>Italy</b>	+26.85%	£578
<b>Netherlands</b>	+52.58%	£695
<b>Poland</b>	-62.44%	£171
<b>Sweden</b>	+67.55%	£763

A6.32 Our estimation of sign interpretation costs rests on a number of assumptions and this cannot be regarded as definitive. For this reason, we carried out a sensitivity analysis to see what the impact would be if costs were higher than assumed, by factors ranging from 10% to 20%. The results of the sensitivity analysis can be seen in the table at Figure 14 following paragraph A6.36.

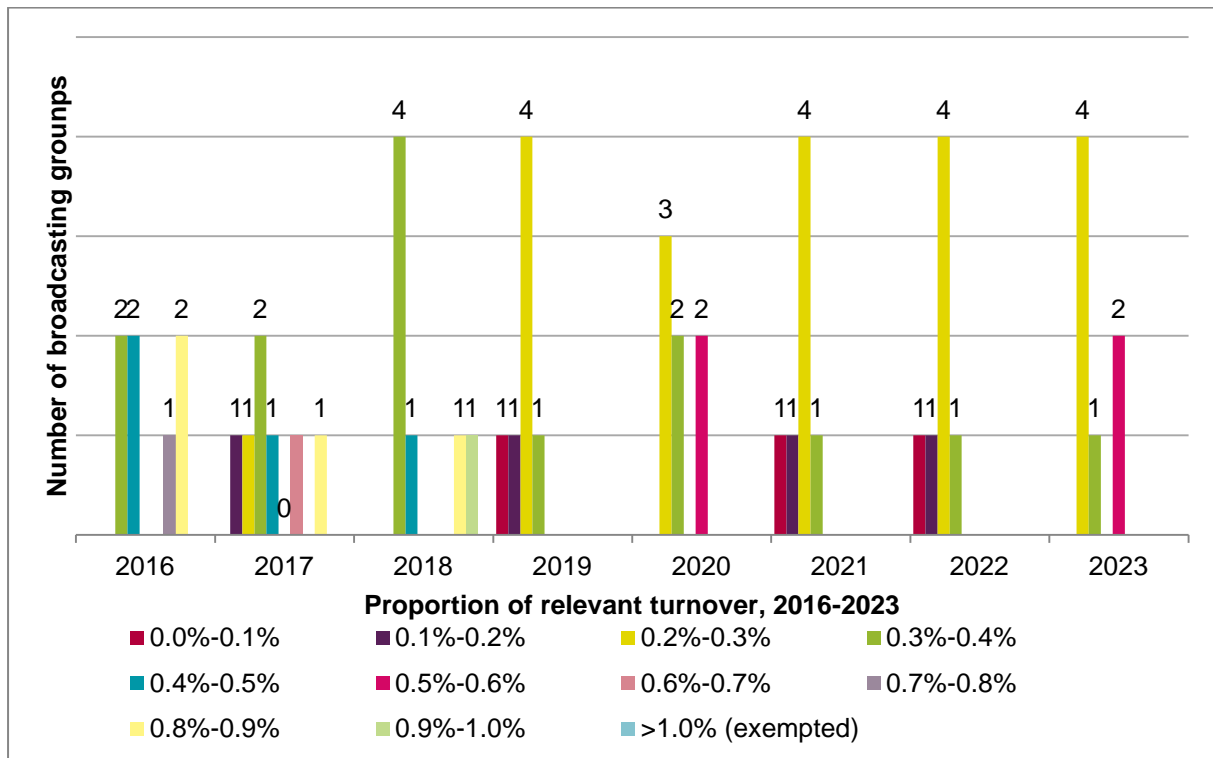
A6.33 As noted above, for reasons of commercial confidentiality, we do not consider it appropriate to publish the results for each channel or broadcasting group. Instead, Figure 13 shows the distribution of access services costs by broadcaster group. Costs are shown as a proportion of the aggregate relevant turnover of channels within a broadcaster group. Only the relevant turnover attributable to channels with access service obligations is included. In summary:

- a) in 2016, the base year (during which we assume that broadcasters would continue to provide additional subtitling in lieu of signing), we estimate that four broadcasting groups would pay between 0.2% and 0.5% of their relevant turnover on access services, one group would pay between 0.5% and 0.8%, and two groups between 0.8% and 1%;
- b) in 2017, the first year these channels would be providing sign interpretation, we estimate that five broadcasting groups would pay between 0.2% to 0.5% of their relevant turnover on access services, one group would pay between 0.5% and 0.8%, and one group between 0.8% and 1%;
- c) in 2019, we estimate that all seven groups would pay between 0.2 and 0.5%; and
- d) by 2023, when the maximum targets are reached by all channels currently required to provide access services, we estimate that five groups would pay between 0.2% and 0.5%, while two groups would pay between 0.5% and 0.8%.

<sup>73</sup> We have adjusted this figure to reflect CPI inflation in 2014



**Figure 13: Impact on total access services costs for broadcasters of sign-interpretation**



A6.34 We estimate that the cumulative average expenditure on access services would fall from 0.58% of aggregate relevant turnover in 2016 to 0.36% in 2023, when signing obligations reach their highest level. The reduction in cost is driven by the growing stock of programmes with subtitling, audio description and signing. Broadcasters often repeat programming, and any such content that already had access services would count towards the relevant quotas.

A6.35 We also assessed the potential impact on how many channels would be required to provide access services. In summary, should every channel provide sign interpretation in order to meet its signing obligations, we estimate that none of the 39 relevant non-domestic channels currently required to provide access services would become exempt by 2023.

A6.36 Finally, although we consider that the costs shown in Figure 12 offer a reasonable indication of how sign-interpretation costs might vary from one country to another, we have assessed the impact on broadcasters if costs were lower or higher than our estimates suggest (as shown in in Figure 14 below). Our analysis indicates that for costs up to 20% lower or higher than our estimate, the number of channels required to provide access services by 2023 would remain the same. The impact on the total cost of access services faced by each broadcaster, expressed as a percentage of relevant turnover, would be minimal (in the range of 0.01 percentage point for 20% variations in the cost of sign interpretation).



**Figure 14: Estimated costs of sign interpretation (2014)**

Country	Percentage difference in labour costs	Effects of higher than estimated costs				
		-20%	-10%	Central Estimate	+10%	+20%
Denmark	80.55%	£648	£729	£822	£904	£987
France	55.00%	£556	£626	£706	£776	£847
Hungary	-67.14%	£118	£133	£150	£165	£180
Italy	26.85%	£455	£512	£578	£635	£693
Netherlands	52.58%	£548	£616	£695	£764	£834
Poland	-62.44%	£135	£152	£171	£188	£205
Sweden	67.55%	£601	£677	£763	£839	£916
Number of channels required to provide access services in 2023		39	39	39	39	39
Number of countries served by qualifying channels		8	8	8	8	8
% of relevant turnover spent on access services		0.35%	0.36%	0.36%	0.36%	0.37%

### Scenario 3: Extra subtitling

A6.37 In this section we estimate the financial impact on broadcasters if all relevant non-domestic channels meet their signing obligations by providing extra subtitling. In this scenario, we estimate the impact on non-domestic channels if all of them are subject to the substitute requirements to provide extra subtitling on a proportion of their programming rising from 5% to 12.5% by the tenth anniversary of the notice date (1 January 2013), as indicated in the table shown in Figure 15 below. Under Ofcom’s proposals, this would be the substitute requirements in lieu of the proposed requirements set under section 303(10) of the Act. In 2017 all these channels would be required to provide signing on 5% of their programming, and would reach the maximum target of 12.5% in 2023.

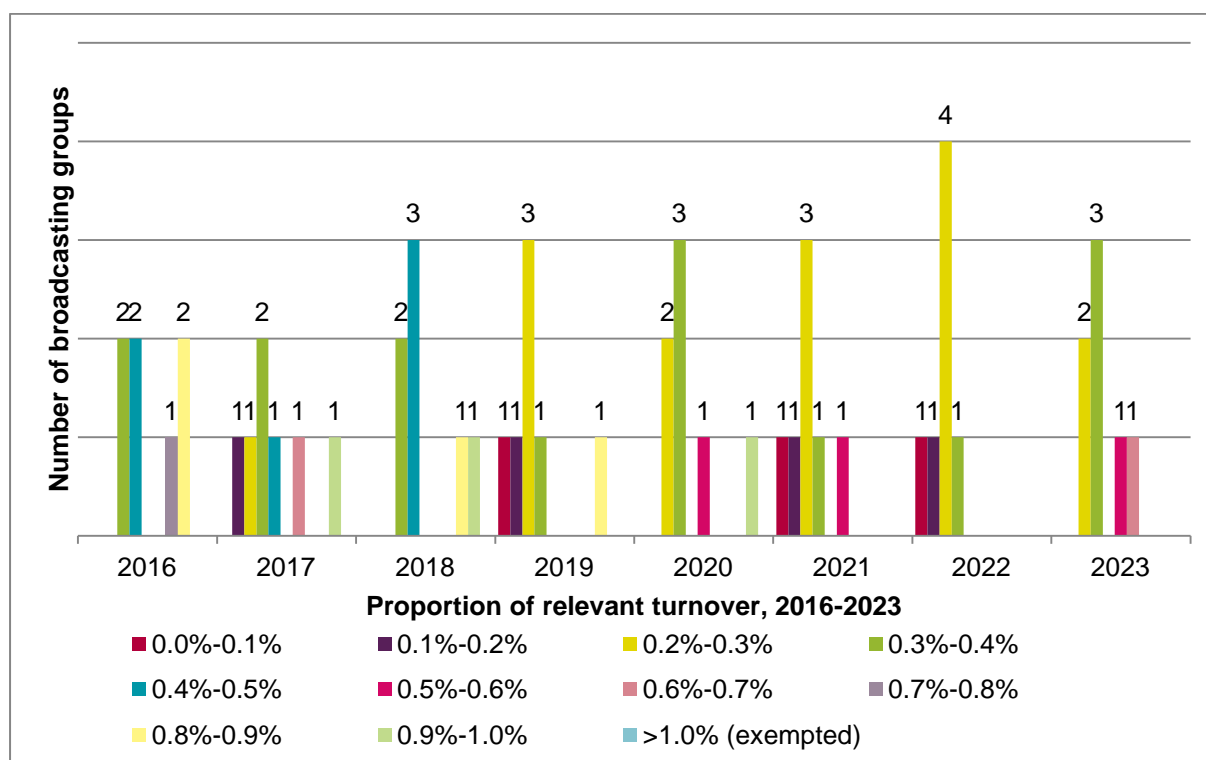
**Figure 15 – Extra-subtitling targets expressed as percentage of total programming**

Anniversary of Notice Date	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	≥10 <sup>th</sup>
<b>Extra Subtitling Quota</b>	5%	5%	5%	5%	7.5%	7.5%	10%	10%	10%	12.5%

A6.38 As set out in paragraph A6.27, we recently collected data on the unit cost of providing subtitling and audio description in Member States served by channels required to provide access services by Ofcom. Ofcom also routinely collects data on total broadcast hours and first run hours, which are used by Ofcom to estimate the number of hours of programming that each broadcaster would have to subtitle, audio describe and sign in order to meet the access services targets on its channels. As noted in paragraph A6.12(e), we assume that broadcasters would build up stocks of programmes with access services which could be used from one year to the other to meet these targets.

- A6.39 Applying the data we have on the cost of providing access services in each Member State to the targets each broadcaster would need to meet, we were able to estimate each channel's total costs if they met their signing obligations by providing extra subtitling. We have also assumed that non-domestic channels which broadcast English language programming with local language subtitles would continue to do so at the current levels, and that this would reduce (or, in some cases, eliminate) the cost of providing subtitles for people with hearing impairments.
- A6.40 As noted above, for reasons of commercial confidentiality, it would not be appropriate to publish the results for each channel or broadcasting group. Instead, Figure 16 shows the distribution of access services costs by broadcaster group. Costs are shown as a proportion of the aggregate relevant turnover of channels within a broadcaster group. Only the relevant turnover attributable to channels with access service obligations is included. In summary:
- a) in 2016, on the basis of the subtitling and audio description quotas faced by non-domestic channels in 2016, and given that all of these channels have chosen to meet their signing obligations by showing extra subtitling during the transitional period, we estimate that four broadcasting groups would pay between 0.2% and 0.5% of their relevant turnover on access services, one group would pay between 0.5% and 0.8%, and two groups between 0.8% and 1%;
  - b) in 2017, the first year these channels would be contributing extra subtitling, we estimate that five broadcasting groups would pay between 0.2% to 0.5% of their relevant turnover on access services, one group would pay between 0.5% and 0.8%, and one group between 0.8% and 1%;
  - c) in 2019, we estimate that six groups would pay between 0.2 and 0.5%, and one group would pay between 0.8% and 1%; and
  - d) by 2023, we estimate that five groups would pay between 0.2% and 0.5%, and two groups would pay between 0.5% and 0.8%. No group would pay more than 0.8%.

**Figure 16: Impact on total access services costs for broadcasters of extra subtitling**



A6.41 We estimate that the cumulative average expenditure on access services would decrease, from 0.58% of aggregate relevant turnover in 2016 to 0.46% in 2023, when extra subtitling requirements reach their highest level. The reasons for this are that the growing library of content with access services would allow broadcasters to meet part of their access service quotas, which form a significant part of channel schedules. A few channels would be able to fulfil all or most of their extra-subtitling requirements by showing language subtitling.

A6.42 We also assessed the potential impact on individual channels. In summary, should every channel provide extra subtitling in order to meet its signing obligations, we estimate that none of the 39 relevant non-domestic channels currently required to provide access services would become exempt by 2023.

A6.43 As we have used data on the actual cost of subtitling incurred by non-domestic channels targeting the countries considered for this impact analysis, we are satisfied that our estimates are reasonably robust. However, for the sake of consistency in our approach, we have tested the impact of our proposed policy under the assumption that the costs of subtitling are lower or higher than our estimates. The results are shown in Figure 17. Conversely to what we have done for the previous two scenarios, Figure 17 does not show the adjusted cost of subtitling for each country. This is because the information on the actual cost of subtitling incurred by broadcasters might be commercially sensitive, particularly in countries served by one or two broadcasters of non-domestic channels only.

A6.44 As the table in Figure 17 below shows, adjusting the cost of subtitling by 20% in either direction does not affect the number of channels that would be required to provide access services under Scenario 3. On average, a 20% lower cost of subtitling would result in a total cost of access services – expressed as a percentage of relevant turnover – 0.08 percentage points lower (0.38%) than our current estimate suggests. Opposite, a 20% higher cost of subtitling would result in an increase in the

total cost of access services – expressed as a percentage of relevant turnover – by 0.08 percentage points (0.54%). In that circumstance, one channel would have its subtitling quota reduced by one third on the grounds of affordability.

**Figure 17: Effects of higher or lower than estimated costs of subtitling**

Effects of higher than estimated costs					
	-10%	-20%	Central estimate	+10%	+20%
Number of channels required to provide access services in 2023	39	39	39	39	39
Number of countries served by qualifying channels	8	8	8	8	8
% of relevant turnover spent on access services	0.38%	0.42%	0.46%	0.51%	0.54%

### Scenario 4: Minimum contributions to alternative arrangements

A6.45 In this section, we estimate the financial impact on broadcasters if all relevant non-domestic channels meet their obligations by contributing to alternative arrangements.

A6.46 Since 2009, domestic channels with smaller audience shares have been excluded from statutory signing obligations, and instead have been able to choose, in order to meet their signing requirements, between showing a minimum amount of sign-presented programming per month and contributing a fixed sum towards alternative signing arrangements. Ofcom’s 2012 Statement allowed non-domestic broadcasters the same options (i.e. showing 30 minutes of sign-presented content a month, or contributing £20k a year to approved alternative arrangements) but also permitted them to provide additional subtitling in lieu of this.

A6.47 As explained in paragraphs 4.15-4.19 of the main document, Ofcom proposes that, from 2017, the regulatory requirement should (as a starting point) be for relevant non-domestic channels to schedule a minimum amount of sign-presented programmes of, rising over time from 30 minutes per month to 75 minutes per month, unless Ofcom considers that these channels should be exempted from these requirements, and instead requires them to meet substitute requirements. However, we remain of the view that, just like relevant domestic channels, relevant non-domestic channels should be able to propose alternative arrangements if they wish to. Broadcasters could not be compelled to do so, but if they chose to do so, then Ofcom proposes that they should continue to be subject to the same levels of contributions as domestic licensees.

A6.48 The table in Figure 18 below shows the contribution levels used for the impact assessment, expressed in 2014 money. In 2017, when these obligations would start to apply, the contribution levels will be adjusted to reflect inflation in 2015 (the latest available calendar year data available at the time of the mid-year review in June 2016).

**Figure 18 - Minimum annual contributions to approved alternatives**

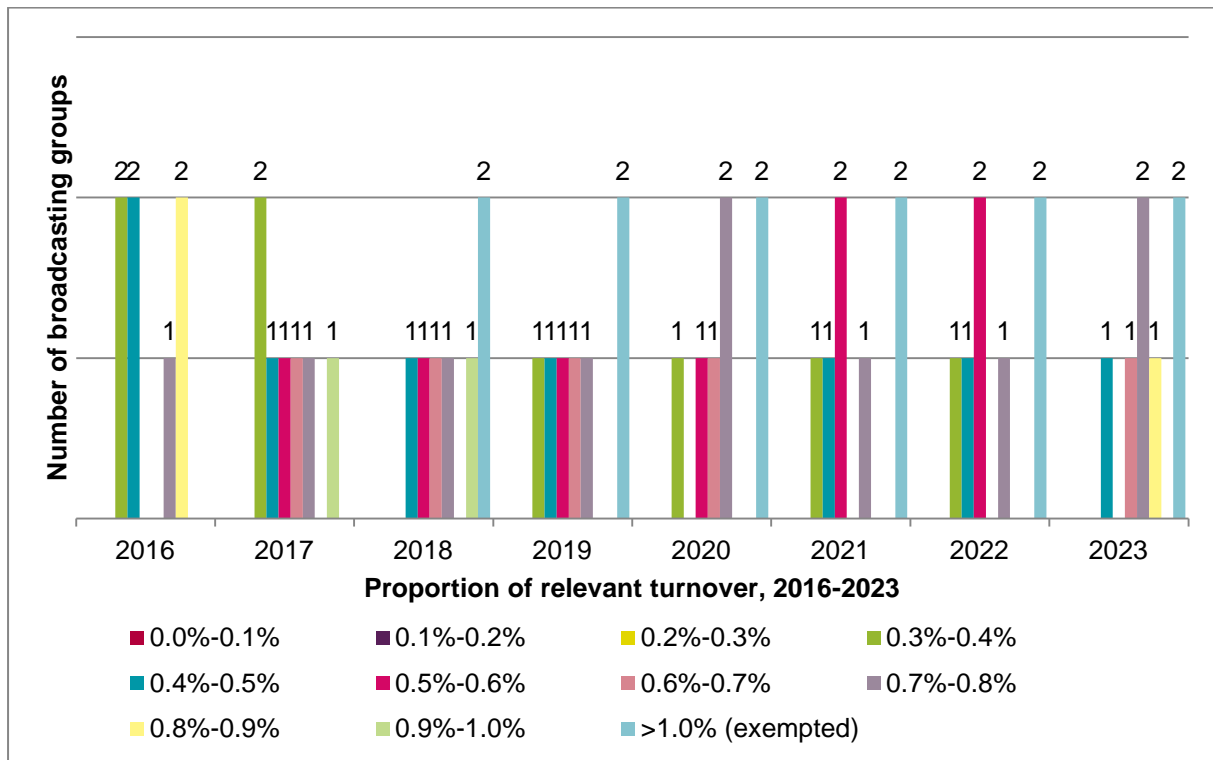
Anniversary of Notice Date	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>
<b>Minimum annual contributions</b>	£24.5k	£24.5k	£24.5k	£24.5k	£36.8k	£36.8k	£49.1k	£49.1k	£49.1k	£61.4k

A6.49 The notice date for all the non-domestic channels required to provide access services in 2016 is 1 January 2013. In 2017 these channels would each be required to pay a minimum contribution of £24,500 (in 2014 money), and would reach the maximum contribution level of £61,400 (2014 money) in 2023.

A6.50 As noted above, for reasons of commercial confidentiality, it would not be appropriate to publish the results for each channel or broadcaster group. Instead, Figure 19 shows the distribution of access services costs by broadcaster group. Costs are shown as a proportion of the aggregate relevant turnover of channels within a broadcaster group. Only the relevant turnover attributable to channels with access service obligations is included. In summary:

- a) in 2016, on the basis of the subtitling and audio description quotas faced by non-domestic channels in 2016, and given that all of these channels have chosen to meet their signing obligations by showing extra subtitling during the transitional period, we estimate that four broadcasting groups would pay between 0.2% and 0.5% of their relevant turnover on access services, one group is estimated to pay between 0.5% and 0.8%, and two groups between 0.8% and 1%;
- b) in 2017, the first year these channels would be contributing towards alternative arrangements, we estimate that three broadcasting groups would pay between 0.2% to 0.5% of their relevant turnover on access services, three groups would pay between 0.5% and 0.8%, and one group between 0.8% and 1%;
- c) in 2019, we estimate that two groups will pay between 0.2 and 0.5%, three groups will pay between 0.5% and 0.8%, while two broadcasting groups will be exempted from access services obligations on the grounds of cost; and
- d) by 2023, when the maximum targets are reached by all channels currently required to provide access services, we estimate that, of the remaining groups, one group will pay between 0.2% and 0.5%, three group will pay between 0.5% and 0.8%, one group will pay between 0.8% and 1%, while no further broadcasting groups would be excluded from access services obligations.

**Figure 19: Impact on total access services costs for broadcasters of contributions to alternative arrangements**



A6.51 We estimate that under this scenario the cumulative average expenditure on access services will increase, from 0.58% of aggregate relevant turnover in 2016 to 0.68% in 2023, when the contributions reach their highest level.

A6.52 As regards individual channels, if all contributed towards alternative signing arrangements, four of the 39 relevant non-domestic channels would become exempt by 2023 and one channel would see its subtitling quota reduced by one third.

## Summary

A6.53 Figure 20 below summarises the impact of our proposals under the four scenarios discussed in this Annex.

**Figure 20 – Impacts of the proposals policy under different scenarios**

Channels exempt from access service requirements on cost grounds (by scenario) by 2023			
Sign Presentation	Sign Interpretation	Extra Subtitling	Contributions to alternative arrangements
23/39	0/39	0/39	4/39
Access service costs as a % of relevant turnover			
Sign Presentation	Sign Interpretation	Extra Subtitling	Contributions to alternative arrangements
0.69%	0.35%	0.46%	0.68%

A6.54 It should be noted that all four scenarios assume that all relevant non-domestic channels are subject to the same signing obligations. In reality:

- a) different signing obligations may apply to different channels in different countries depending on the specific needs of sign language users in each Member State of the EU, and on the choices made by broadcasters;
- b) Ofcom would be unlikely to agree to proposals for alternative arrangements if these seemed likely to result in a channel becoming exempt from access services obligations. In practice, therefore fewer channels would be likely to become exempt than indicated in the table above;
- c) we have assumed that costs and revenues would be constant in real terms. However, as access service obligations increase, it is possible that broadcasters will be able to realise efficiencies that drive lower unit costs, as has happened in the UK.

## Financial impact of our proposals on channels broadcast in EEA countries

A6.55 In Section 5 of the main document, we explain why Ofcom considers that from 1 January 2017 non-domestic broadcasters that target EEA countries that have entered into arrangements with the European Union to adopt the AVMS Directive should be subject to the same access service obligations that apply to non-domestic channels targeting EU countries. Subject to the outcome of the consultation, we propose to notify relevant channels targeting EEA EFTA States of any such obligations in mid-2016, and require them to provide access services with effect from 1 January 2017.

A6.56 As with non-domestic channels broadcast to EU countries, Ofcom would assess their eligibility to provide access services on the basis of audience share and affordability criteria.

### Audience share and signing thresholds

A6.57 Our 2012 consultation<sup>74</sup> sets out the methodology used by Ofcom to derive the audience share and signing thresholds in all of the EU Member States. We see no reason to depart from this methodology for the purpose of calculating the thresholds applying to EEA EFTA States. As a result, the audience share and signing thresholds applying in Iceland, Liechtenstein and Norway would be as set out in Figure 21:

**Figure 21: Audience share and signing thresholds for EEA EFTA States**

EEA EFTA State	Audience Share Threshold	Signing Threshold
Iceland	22.85%	*
Liechtenstein	71.16%	*
Norway	0.90%	18.06%

\*Where an asterisk appears instead of a signing threshold, this indicates that the nominal threshold would exceed 100% of total viewing

<sup>74</sup> Paragraphs 3.4 and 3.5, 2012 Consultation (<http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/summary/condoc.pdf>)

A6.58 Our understanding is that there are no Ofcom-licensed channels that specifically target Iceland and Lichtenstein. Given the small size of the populations of both territories, the audience share thresholds for both are relatively high, so it is unlikely that, in future, an Ofcom-licensed channel would qualify to provide access services.

A6.59 The population of Norway is rather higher, so the audience share threshold is commensurately lower. There are eight channels licensed by Ofcom and broadcasting in Norway which in 2014 had an audience share equal or above the audience share threshold (but below the signing threshold). Our assessment looks at the impact on these channels and the broadcasting groups into which they fall. For the purpose of the analysis, we have assumed no change in the audience share of these channels.

### **Access service costs in Norway**

A6.60 We do not have data on access service costs in Norway. In order to estimate the cost of providing access services in Norway, we have taken the average of the corresponding costs for subtitling and audio description in Sweden and Denmark. There are two main reasons why we consider this approach to be reasonable:

- a) each of the channels available in Norway is operated by a broadcaster that also transmits channels in Sweden and Denmark; and
- b) two of the three broadcasters has or did contract on a pan-Scandinavian basis for access services, and told Ofcom that the unit costs were the same in both Sweden and Denmark.

A6.61 Accordingly, we consider it reasonable, pending the availability of actual data, to use an average of Swedish and Danish costs to estimate the cost of providing subtitling and audio description in those countries.

A6.62 As regards signing costs, we derived these in the same way as paragraphs A6.18 to A6.20. Thus, we applied the percentage difference in the labour cost between the UK and Norway and we applied it to the cost of signing in the UK in order to estimate the cost of signing in Norway.

A6.63 Ofcom is required to extend access services obligations to channels targeting Norway that qualify on audience share and affordability grounds. If following this consultation Ofcom decides to extend access services obligations from 1 January 2017, we would:

- a) ask broadcasters for data on subtitling costs (as each of the channels makes use of language subtitling) and take this into account in determining which channels should provide access services from 1 January 2017; and
- b) seek data from the broadcasters on other access service costs as soon as this became available, in order that future assessments of which channels qualify could take this into account.

### **Estimated financial impact**

A6.64 Using the cost estimates and the latest available data on relevant turnover, we have assessed the impact of our proposals to extend access services requirements to non-domestic channels targeting Norway.



A6.65 For the purpose of the analysis, we have:

- a) taken account of the fact that all channels meeting the audience share threshold in Norway will have reached the 4th anniversary of their notice date by 1 January 2017;
- b) assumed that the proposed changes to signing arrangements for non-domestic channels targeting EU countries will also apply to any such channels targeting Norway.

A6.66 On this basis, we estimate that:

- a) assuming all channels were subject to sign-presentation requirements, all non-domestic channels in Norway would be exempted from access services obligations on the grounds of affordability in 2017;
- b) assuming all channels were subject to substitute requirements which meant that they could meet their signing obligations by showing sign-interpretation, five of the eight channels meeting the audience share threshold would be required to provide access services from 2017 to 2023 (when the maximum quotas would apply), but three would be exempted on the grounds that their costs would exceed 1% of their relevant turnover;
- c) assuming all channels were subject to substitute requirements such that they could meet their signing obligations by providing extra subtitles, all eight channels would still be required to provide access services between 2017 and 2023;
- d) finally, assuming all channels met their signing requirements by contributing to alternative arrangements, four channels would be required to provide access services between 2017 and 2023, while four channels would be exempted on the grounds of affordability.

A6.67 As with other non-domestic channels (see paragraph A6.54), Ofcom would be unlikely to accept proposals for alternatives to the default arrangements that would result in the cessation of access service provision on affordability grounds.

## Proposed review

A6.68 Ofcom intends to carry out a review of the arrangements in 2019, alongside a review the signing arrangements applying to domestic channels. The review will allow Ofcom to take stock of whether the revised Code requirements are delivering the expected benefits to sign language users in different Member States, and whether, as anticipated, the costs to most broadcasters remain a small proportion of relevant turnover.