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# **Review of Ofcom’s Code on Television Access Services and Guidance on BBC Accessibility**

Statement on the code of guidance to be applied to the BBC, and non-material revisions to Ofcom’s Code on Television Access Services

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[Review of Ofcom’s Code on Television Access Services and Guidance on BBC Accessibility](#) – Welsh overview

**STATEMENT:**

Publication Date: 5 February 2021

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# 1. Overview

Ofcom's Code on Television Access Services includes guidance which must be observed by the BBC in relation to providing access services (subtitles, audio description and signing) on its television channels. In line with the BBC's Royal Charter and Agreement 2016, and following our consultation in November 2019, this document sets out our decisions regarding how the BBC should make its UK Public Services accessible. It also sets out changes to improve the clarity of our Code on Television Access Services for all broadcasters.

## What we have decided – in brief

### We have decided to maintain the existing targets included in Ofcom’s Code on Television Access Services (‘the TV Access Code’) for BBC UK Public Television Services

This means the BBC should continue to provide subtitling on 100% of its programming, audio description on 10% and signing on 5%.

To ensure the targets remain proportionate, the TV Access Code also sets out guidance on how channels may be excluded from the targets, or subject to alternative requirements. The current guidance on exclusions will continue to apply to all BBC television channels.

### We have decided to consider guidance on the accessibility of BBC iPlayer separately

In December 2018, we made recommendations to Government on drafting regulations to improve the accessibility of regulated video on-demand programme services (“ODPS”).<sup>1</sup> At government’s request, Ofcom has conducted a [further consultation](#) on additional detail and will make further recommendations for the Government’s regulations. Once they have been made and are in force, the regulations will be complemented by an Ofcom code of guidance setting out how ODPS providers should meet the requirements (“the On-Demand Access Code”). We will consult on our proposed guidance for the BBC’s ODPS (including iPlayer) at the same time as consulting on the On-Demand Access Code

### We have decided to make some changes to the layout and wording of the TV Access Code to make it more user-friendly for broadcasters and access service users

Changes were needed following various amendments to the Code over the years since it was first published. As part of these changes, we have decided to move our best practice guidelines (“Guidelines on the provision of television access services”) into a separate document. This reflects how these guidelines are different in nature from the rest of the Code, as they focus on ensuring the quality and usability of access services.

We have also made changes to the Code to reflect recent amendments to legislation.

This overview is a simplified high-level summary only. Our decisions and reasoning are set out in full in Sections 3 and 4.

## What’s happens next?

- 1.1 We have published the [revised TV Access Code](#) alongside this statement, which comes into immediate effect.
- 1.2 We have also moved our [best practice guidelines](#) from Annex 4 of the Code to a separate document. We plan to consult on revisions to these guidelines in due course.
- 1.3 We will also consult on guidance for the BBC’s UK ODPS separately in due course.

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<sup>1</sup> See our [2018 Statement](#).

## 2. Background to BBC Access Requirements

- 2.1 In this section, we set out the background to our review of the guidance on accessibility which must be observed by the BBC.

### Current arrangements

- 2.2 Currently, the BBC is required to observe Ofcom’s Code on Television Access Services (“TV Access Code”)<sup>2</sup> as modified in accordance with Clause 59 of the 2006 BBC Agreement<sup>3</sup>. This arrangement has remained in force until such time as Ofcom issues a new Code<sup>4</sup>. We have maintained this arrangement until now as we believe it continues to provide good levels of accessibility. The BBC regularly meets or exceeds existing targets for its UK Public Television Services<sup>5</sup> and has also made significant progress in making its on-demand services (such as iPlayer) accessible<sup>6</sup>.
- 2.3 Under the existing framework, the TV Access Code applies in relation to the BBC’s UK Public Television Services<sup>7</sup> and sets out 10-year targets in relation to subtitling (100%)<sup>8</sup>, audio description (10%) and signing (5%) as well as the relevant exclusion and alternative arrangement criteria which apply. In addition to the Code targets, the BBC (along with ITV, Channel 4 and Sky) has also made a voluntary commitment to audio describe at least 20% of content on the majority of its channels.

### 2016 BBC Charter and Agreement

- 2.4 The 2016 Agreement requires the BBC to observe Ofcom guidance in relation to access services on all its UK Public Services (see Annex 1). This is a broader range of services than under the 2006 Agreement and now includes the UK ODPS<sup>9</sup> and BBC radio programme services. The BBC must observe any such Ofcom guidance in relation to all programmes included in these services, including programmes in UK Public Services that are made available online. This part of the Agreement does not cover content other than

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<sup>2</sup> See sections 303-305 of the Act, which require Ofcom to draw up a code giving guidance as to the extent to which television services licensed under Part 1 of the Broadcasting Act 1990 or Part 1 of the Broadcasting Act 1996 should promote the understanding and enjoyment of programmes by people with sight and/or hearing impairment and to give guidance on the means by which such understanding and enjoyment should be promoted.

<sup>3</sup> Clause 59 (reproduced in Annex 1) sets out that the BBC must observe the TV Access Code with certain specified modifications which need to be read in conjunction with Sections 303-305 of the Code.

<sup>4</sup> See Annex 1 for clause 5, part 3, Schedule 4 of the [2016 BBC Agreement](#).

<sup>5</sup> See our 2020 [TV Access Services](#) report.

<sup>6</sup> See p.130 of the BBC’s [Annual Report 2019/20](#).

<sup>7</sup> The 2006 Agreement defines ‘UK Public Television Services’ as ‘those UK Public services which consist of television programme services’. The BBC is not currently required to observe any guidance on the accessibility of its other services, including its ODPS, such as BBC iPlayer.

<sup>8</sup> The 100% subtitling target was formalised to reflect a commitment from the BBC to go beyond the 90% target required under the 2006 Agreement.

<sup>9</sup> The 2016 Agreement defines UK On Demand Programmes Services as ‘those UK public services the principal purpose of which is the provision of programmes comparable in form and content to programmes normally included in television and radio programme services, and access to which is on demand’.

‘programmes’ included in the UK Public Services (e.g. visual layout of the BBC news website).

2.5 The 2016 Agreement also gives Ofcom greater flexibility in relation to determining what (if any) guidance it sets, including deciding whether to revise or even remove existing targets under the TV Access Code. The Agreement does not specify in which code or codes any such guidance should be included.

2.6 We have considered this part of the Agreement alongside the wider regulatory framework<sup>10</sup> of:

- The BBC’s Mission to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain.<sup>11</sup>
- The BBC’s Public Purposes, which include, in summary:
  - Public Purpose 1: To provide impartial news and information to help people understand and engage with the world around them
  - Public Purpose 2: To support learning for people of all ages
  - Public Purpose 3: To show the most creative, highest quality and distinctive output and services
  - Public Purpose 4: To reflect, represent and serve the diverse communities of all of the United Kingdom’s nations and regions and, in doing so, support the creative economy across the United Kingdom.<sup>12</sup>
- In setting the regulatory conditions for the BBC’s UK Public Services under the Operating Licence, Schedule 2 of the 2016 Agreement requires Ofcom to have particular regard to the need for the BBC to secure the provision of distinctive output and services, including in terms of the range of audiences served.<sup>13</sup>

## 2019 Consultation

2.7 In November 2019, we ran a [consultation](#) to seek stakeholder views on our proposals for accessibility guidance to be applied to the BBC.

2.8 We also took the opportunity to seek views on proposed modifications to the wording and structure of the TV Access Code.

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<sup>10</sup> On 24 October 2019, we published our second Annual Report on the BBC which includes our assessment of the BBC’s performance in delivering its Mission and Public Purposes.<sup>10</sup> We report on how the BBC has met the regulatory conditions in the Operating Licence along with how it has performed more broadly against its Mission and Public Purposes.

<sup>11</sup> See Clause 5 of the 2016 BBC Royal Charter.

<sup>12</sup> See Clause 6 of the 2016 BBC Royal Charter. Note: the BBC’s fifth Public Purpose to reflect the United Kingdom, its culture and values to the world is outside of Ofcom regulatory role. It lies with the BBC to set the licence for the BBC World Service (clause 32 of the Agreement).

<sup>13</sup> See Clause 1-2, Schedule 2 of the 2016 Agreement.

- 2.9 We received eight responses to our consultation: from the BBC, Wavelength, Royal National Institute of Blind People (“RNIB”), Royal Association for Deaf People (“RAD”), National Association of Deafened People (“NADP”), two individuals and a charity.
- 2.10 The publication of this statement has been delayed due to the unprecedented challenges caused by the Covid-19 pandemic.

## **Impact Assessment and Equality Impact Assessment**

- 2.11 Annex 2 of this document constitutes an impact assessment as defined in section 7 of the Communications Act 2003 (the “Act”). Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making.<sup>14</sup> We also assess the impact of our decisions on specified equality groups in an ‘Equality Impact Assessment’ in Annex 2.

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<sup>14</sup> For further information about Ofcom’s approach to impact assessments see our guidelines, Better policy-making: Ofcom’s approach to impact assessment.

## 3. Decisions regarding Guidance on BBC Accessibility

### Summary

- The guidance regarding the BBC’s UK Public Television Services will continue to be included in the existing TV Access Code. We consider that this will be clearer for consumers and will help maintain consistency across the industry.
- Ofcom will continue to encourage research and innovation into the development of radio accessibility services. However, as there is currently a limited precedent for the provision of such services, we are not introducing guidance for BBC Radio services at this point.
- The provision of access services on on-demand programme services poses distinct policy challenges. We will therefore be consulting on guidance for BBC ODPS alongside guidance for other regulated ODPS.
- We have decided to maintain the BBC’s existing targets for its television services, along with the applicable guidance on exclusions and promoting awareness. However, we expect the BBC to exceed these targets, as currently, on a voluntary basis but if necessary we will reconsider the existing target levels in the Code and guidance on exclusions.
- We are not making any changes to the relevant guidance in relation to BBC television services. However, we have amended some of the wording of the TV Access Code to update references and terminology in line with the 2016 Agreement. Our modifications are set out in Annex 3 of this Statement.

### Scope of guidance for BBC’s UK Public Services

- 3.1 The 2016 Agreement enables Ofcom to apply accessibility guidance in relation to programming included in the BBC’s UK Public Services. This includes the BBC’s UK Public Television Services, Radio Programme Services, and UK On-Demand Programme Services (“ODPS”)

### What we proposed

- 3.2 We proposed to continue to include guidance in the existing TV Access Code in relation to the BBC’s UK Public Television Services and not to introduce guidance for BBC Radio programmes at this point. We also proposed to introduce guidance on BBC ODPS separately. In December 2018, Ofcom made recommendations to Government on drafting regulations to improve the accessibility of all ODPS regulated under Part 4A of the Act.<sup>15</sup> Following a formal request from Government, we are now consulting on additional detail, looking at how the regulations should work in practice, including how any exemptions

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<sup>15</sup> See our [2018 Statement](#).



should apply.<sup>16</sup> Subject to regulations being made by Government, Ofcom anticipates consulting on a code giving guidance to ODPS providers (“the On-Demand Code”) on meeting the new legislative requirements. We proposed to consult on guidance for BBC ODPS at the same time as consulting on the wider On-Demand Code.

## What respondents said

- 3.3 **BBC** agreed with our proposals on the scope of guidance to be applied to the BBC. It said that introducing guidance for all ODPS in one Code would help to maintain consistency in the provision of access services across providers. It said that, when considering guidance for ODPS, Ofcom should take account of the impact of delineating between “live-over-IP” (i.e. broadcast television delivered live through IP networks such as the internet), and on-demand content, when delivered by the same provider.<sup>17</sup>
- 3.4 **RAD** said that continuing to apply the current guidance for BBC Television services would encourage the BBC to be an exemplar of best practice. It agreed with our proposal to consider BBC ODPS separately. It said that more research is needed on potential solutions for radio accessibility, such as radio subtitling, transcribing<sup>18</sup> and emergency alerting.
- 3.5 **RNIB** agreed with our proposals on the scope of guidance to be applied to the BBC.
- 3.6 **NADP** said that not introducing guidance for radio services would exclude those with hearing loss from accessing radio programmes. It said that the BBC should be encouraged to use technology to develop the provision of radio subtitling on its services, for example, through automated subtitling or automatically time-stamped subtitles for scripted content. It said that written lyrics are provided for scripted content on services such as Apple or Amazon Music, and that the BBC could adopt a similar technology on its radio services. It agreed with considering guidance for all ODPS together. However, it said that providers should be considering accessibility now when developing their platforms, and so Ofcom should set out what it would expect the On-Demand Code to look like.

## Our reasoning and decisions

### Television

- 3.7 We considered including guidance for BBC television channels in a new, separate Code, but we do not believe that there should be a strong differentiation between the guidance relating to BBC channels and the guidance relating to other UK television channels to which the TV Access Code applies. In particular, we consider that setting out the relevant guidance for all UK television services in one code encourages the BBC to remain a model of good practice<sup>19</sup>, and aids clarity for consumers and industry alike. Therefore, we have

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<sup>16</sup> See our [further consultation](#).

<sup>17</sup> The BBC delivers live broadcast television through BBC iPlayer.

<sup>18</sup> Transcribing is when speech or audio is converted into a written text document.

<sup>19</sup> See our latest [TV Access Services Report](#) for details of the BBC’s access service provision on its television channels.

decided to continue to include guidance in relation to BBC UK Public Television Services in the TV Access Code.

## Radio

3.8 We considered whether to introduce guidance on the accessibility of BBC radio services as we recognise they are not by nature accessible to people with hearing loss. However, although there has been some discussion around the possibility of script provision in the future, there is currently limited precedent for the provision of radio access services and no clear industry-standard for how such measures would work.<sup>20</sup> We therefore have decided not to introduce guidance for BBC radio services at this time. However, Ofcom will continue to encourage research and innovation to develop the accessibility of radio services. We are planning to revise our best practice guidelines in due course, and will consider providing guidance on radio accessibility as part of this work.

## On-Demand Services

3.9 While the BBC has made significant progress in making its ODPS accessible<sup>21</sup>, we recognise the importance of on-demand accessibility in general to the relevant consumers.<sup>22</sup> We also want to encourage an industry wide effort to address issues such as standardising delivery formats for subtitles. We therefore have decided to introduce guidance for BBC ODPS alongside guidance for other regulated ODPS. This will allow us to address at one time the distinct policy challenges posed by the provision of ODPS access services, such as how we can delineate “live over IP” and on-demand content to ensure a proportionate approach.

3.10 In the meantime, Ofcom continues to encourage all on-demand providers to increase the provision of ODPS access services whenever it is proportionate to do so. It is not appropriate for Ofcom to prejudge the contents of the On-Demand Code before the Government’s regulations have been made. We will consult on proposals for the On-Demand Code once this is the case<sup>23</sup>.

## Online services

3.11 As stated in Section 2, the relevant part of the Agreement covers ‘programmes’ included in the BBC’s UK Public Services. Changes to the Audiovisual Media Services Directive (see Section 4), alter the definition of a ‘programme’ to include video clips. We will consider whether it would be appropriate to include any requirements in relation to BBC short form video clips online as part of our consultation on the ODPS accessibility code.

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<sup>20</sup> NPR’s ‘Read the Transcript’ initiative currently uses script provision to make its services more accessible. Transcripts are distributed online each week e.g. [Transcript: NPR's Full Interview With Former President Barack Obama](#).

<sup>21</sup> See p.130 of [the BBC's Annual Report 2019/20](#).

<sup>22</sup> See our 2018 Statement on [Making On-Demand Service Accessible](#).

<sup>23</sup> See our [further consultation](#).

## Maintaining existing targets for BBC Television Services

### What we proposed

- 3.12 We proposed not to make any changes to the applicable guidance for the BBC in our TV Access Code. As such, we proposed to maintain the BBC's current access service targets (subtitling on 100% of its programming, audio description on 10% and signing on 5%), along with the existing guidance on exclusions<sup>24</sup> and on promoting awareness<sup>25</sup>.
- 3.13 In line with our guidance on exclusions, BBC Parliament and BBC Alba are currently excluded entirely from the targets as they have an average audience share of less than 0.05%, and BBC News is excluded from the audio description target due to the technical difficulty, and more limited audience benefit, of provision on its live news channel where there is little space within the dialogue/soundtrack to add audio description.

### What respondents said

- 3.14 **BBC** said that maintaining current targets would enable it to achieve its mission of serving all audiences while remaining flexible in its delivery of access services. It added that it already exceeds these targets in a number of areas as part of its ongoing commitment to creating a BBC for everyone. It said that it publishes a significant amount of its own guidance on the application and development of accessibility across all of its services.<sup>26</sup>
- 3.15 **Wavelength** said that access services should be provided on all BBC programming to avoid excluding relevant users.
- 3.16 **RNIB** said that the BBC can be relied upon to exceed its targets and welcomed Ofcom's willingness to reconsider target levels if necessary.
- 3.17 **RADP** questioned whether maintaining the existing signing target would result in a stagnation of access services at current levels. It said that Ofcom should encourage the BBC to show continuous and progressive improvement in the accessibility of its television services. This should ideally result in an incremental increase in the percentage of signed programmes each year.
- 3.18 **NADP** said the BBC should be held to account not only for meeting targets, but also for the quality of its access services. It said that the subtitling target should be expanded to include all verbal content, such as song lyrics at the end of programmes, trailers for upcoming programmes and announcements between programmes. It said that BBC Parliament and BBC Alba should not be exempt from subtitling targets: BBC Parliament is likely to be of particular interest to older viewers, who are also more likely to have a hearing impairment;

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<sup>24</sup> See paras 1.19-1.27 of the TV Access Code.

<sup>25</sup> See the Promoting Awareness Section (para 1.35 and 1.36) of the TV Access Code.

<sup>26</sup> See [BBC Statement on Accessibility](#); [BBC Editorial Guidelines on accessibility](#); [BBC Editorial Guidelines' guidance for visually and hearing impaired audiences](#); [BBC Accessibility for Products](#); [BBC's GEL \(Global Experience Language\)](#); and [BBC Subtitle Guidelines](#).

and BBC Alba should provide subtitles for Gaelic speakers, who should have equivalent access to television to the English speaking population.

## Our reasoning and decisions

### Targets

- 3.19 The BBC sets a leading example for other broadcasters by consistently meeting and exceeding its targets. The BBC is currently subject to the highest subtitling target of all broadcasters (100%), and we have decided to maintain this target at the maximum level.
- 3.20 The BBC is subject to a 10% audio description target but has voluntarily committed to audio describe 20% of its programming, which it has done to-date without regulatory intervention. Ofcom is therefore confident in the BBC's ability to continue to meet its voluntary commitment, including in relation to future services.
- 3.21 The BBC is already meeting the highest level of signing target (5%) under the TV Access Code.<sup>27</sup> We consider it would be disproportionate to require the BBC to meet a higher signing target given that signing is significantly more expensive to provide than audio description and subtitling and serves fewer users<sup>28</sup>. We believe that requiring the BBC to use its resources to meet higher targets could stifle innovation in developing accessibility across its services. We have therefore decided to maintain the BBC's existing targets, and not to formalise the voluntary arrangement for audio description by introducing a higher target. However, we will continue to monitor the BBC's provision, having regard to standards across the industry, and will reconsider the target levels in future if needed. We continue to encourage broadcasters to think of the targets as a starting point / minimum level of provision.

### Exclusions

- 3.22 We considered whether we should set a higher bar for excluding BBC channels from the requirements, for example, in assessing whether channels should be excluded for having a low audience share.
- 3.23 We acknowledge that the BBC currently provides some access services on a voluntary basis for its excluded services, providing subtitling on 18.6% of programming on BBC Parliament and 100% of programming on BBC Scotland in 2018/19.
- 3.24 We took into account NADP's concerns regarding the impact of excluding BBC Parliament and BBC Alba. However, we consider it would be impractical to require subtitling based on

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<sup>27</sup> In practice, in 2018, it provided signing on 5.2% to 6.5% of programming on the required channels. See p180 of the BBC's annual report 2018/19.

<sup>28</sup> Estimates suggest there are around 11 million people in the UK with hearing loss, 2 million people with poor or no vision and 24,000 people in the UK who use British Sign Language as their main language. Sources: Action on Hearing Loss, 2015, Hearing Matters, The economic impact of partial sight and blindness in the UK adult population, July 2009, Access Economics, p. 45), British Deaf Association statistics.

individual assessments of audience demographic. Audience share figures are currently gathered using BARB, which is widely understood to be a standardised and reliable measurement tool across the industry.

### Quality/ Usability

- 3.25 We believe it is vitally important that access services are delivered to a high standard, and already provide best practice guidelines on quality for all broadcasters. Given the BBC's role in carrying out research and development work, we do not consider it necessary to introduce additional guidelines for the BBC only.
- 3.26 Guidance on non-speech information, such as song lyrics, is provided in our existing [best practice guidelines](#). We are planning to revise our best practice guidelines for all broadcasters and will consider providing guidance on the accessibility of trailers and programme announcements as part of this work.

## Stakeholder Comments on Equality Impact Assessment

### What we proposed

- 3.27 Annex 2 to our Consultation contained our Equality Impact Assessment ('EIA') for the proposals set out in that consultation document. This assesses the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 3.28 In summary, we considered that our proposals would improve the clarity of the Code for broadcasters and increase the benefits of access service provision to the relevant equality groups. We considered that our proposals were unlikely to have a detrimental impact on any of the relevant equality groups, including people with disabilities and older people.

### What respondents said

- 3.29 NADP said that continuing to apply current guidance to the BBC could exclude people with hearing loss from accessing television and radio services and that this would have a negative impact.

### Our reasoning and decisions

- 3.30 The EIA looks at the impact of the proposed changes relative to the status quo, rather than to a range of alternative changes. We remain of the view that the changes that we proposed and have decided to make to the TV Access Code will have a neutral impact on the relevant equality groups, as set out in the EIA accompanying this statement (Annex 2).

## 4. Decisions on Ofcom’s changes to the TV Access Services Code

### Summary

- Ofcom has taken this opportunity to update the TV Access Code to reflect new statutory requirements implementing the revised Audiovisual Media Services Directive (“AVMSD”).
- Ofcom has decided to apply our proposed changes to the wording and structure of the TV Access Code, including moving our best practice guidelines to a separate document.

### Changes to reflect new statutory requirements

- 4.1 On 6 November 2018 the EU completed a review of the Audiovisual Media Services Directive (“AVMSD”). The revised AVMSD introduces a number of changes, implemented in the UK by the [Audiovisual Media Services Regulations 2020](#) which includes amendments to existing requirements and new provisions on accessibility.
- 4.2 We have taken this opportunity to update the TV Access Code to reflect the new amendments to Section 303 of the Communications Act. These changes are as follows:
- a) Reflecting the fact that the Code now relates to provision for ‘people with disabilities’ more broadly and those with disabilities relating to sight and/or hearing ‘in particular’;
  - b) Including a provision encouraging broadcasters to develop accessibility action plans and to notify any such plans to Ofcom;
  - c) Requiring broadcasters to report annually to Ofcom on the accessibility of their services to people with disabilities<sup>29</sup>.
- 4.3 We have also taken the opportunity to reflect changes under the [Broadcasting \(Amendment\) \(EU Exit\) Regulations 2019 to Ofcom’s jurisdiction over TV services](#). We have updated our definition of ‘non-domestic broadcasters’ to now only cover providers of television services which broadcast to countries party to the European Convention of Transfrontier Television (“the ECTT”) other than the United Kingdom.
- 4.4 Ofcom does not plan to consult on these changes further as they simply replicate new legislation.

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<sup>29</sup> Ofcom currently requires broadcasters to report on the accessibility of their services twice a year.

## Changes to the wording and structure of the TV Access Code

### What we proposed

- 4.5 We proposed to make some changes to the wording and structure of the TV Access Code to improve its clarity. These changes did not involve any substantive changes to the Code.
- 4.6 These changes included:
- Explaining that the Code applies to relevant television services regardless of the means of delivery, e.g. that it includes services delivered online.
  - Moving our best practice guidelines (Annex 4 of the Code) into a separate document. We are planning to consult on revisions to these guidelines in due course, including to expand them to include guidance for ODPS providers. We proposed to remove two paragraphs from the existing Code (relating to equal opportunities legislation and to seeking advice from disability groups) and include relevant guidance instead in the separate guidelines.
  - A more detailed summary of our proposed changes is included in Section 5 of the [Consultation](#), and set out in full in Annex 3.

### What respondents said

- 4.7 **BBC** said that the choice of wording to explain that the code applies ‘regardless of the means of delivery’ may lead to unintended consequences due to limitations in delivering live content via IP; for instance currently subtitles and audio description cannot be delivered on live content on an iPhone.
- 4.8 **NADP** disagreed with considering Annex 4 separately. It said Ofcom should have prioritised a consultation on this section of the Code, as it contains the most urgent issues on the standard of broadcast subtitles. It said that wording relating to equal opportunities legislation and to seeking advice from disability groups should not be removed from the Code until adequate replacements have been established.
- 4.9 A charity said that subtitling of foreign language programming should not count towards the Code targets.

### Our reasoning and decisions

- 4.10 The Code applies to the television services listed in section 303 of the Communications Act. The requirements will extend to online delivery if the online service can be accessed by means of a regulated electronic programme guide<sup>30</sup>. We have added a footnote reference in the revised Code for maximum clarity<sup>31</sup>. Nevertheless, Ofcom encourages broadcasters to make their online services accessible wherever possible.

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<sup>30</sup> See [Section 211](#) of the Communications Act 2003.

<sup>31</sup> See footnote 2 of the TV Access Code.

- 4.11 Under the Communications Act, Ofcom is also able to exclude broadcasters from the full requirements on grounds of technical difficulty. The revised Code wording clarifies that this may include difficulties related to the ‘platform used for the delivery of the service,’ and that Ofcom will consider any such exemptions on a case by case basis (see 1.29 of the revised Code).
- 4.12 We acknowledge NADP’s concerns that our best practice guidelines should be updated as a matter of urgency and agree that the quality of access services is a vital issue for relevant consumers. Before we consult on revisions to our guidelines, we want to understand more about user preferences for access services on TV and on-demand services and so have commissioned a review of existing research in this area. Given also that we want to expand the guidelines to cover on-demand accessibility, we think it is most appropriate to consult on revisions to the best practice guidelines at the same time as we consult on the On-Demand Code. In the meantime, we continue to encourage broadcasters to improve the quality of their access services; for instance, by facilitating best practice sharing through our broadcast and on-demand accessibility industry roundtables.
- 4.13 We would also like to clarify that we are not removing the two paragraphs relating to equal opportunities legislation and to seeking advice from disability groups completely, but instead including relevant guidance relating to them in the separate best practice guidelines.<sup>32</sup> The best practice guidelines have now been moved to a [separate document](#) and as above, are currently being reviewed. We will consider the issue of foreign language programming as part of this review.

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<sup>32</sup> Ofcom has also taken this opportunity to correct an error in our best practice guidelines. The guidelines currently say: “The Code on Television Access Services requires that, in selecting and scheduling signed programmes, broadcasters should seek advice from disability groups about how best to maximise the benefits to those with hearing impairments”. We have removed “signed” as our guidance on seeking advice from disability groups applies to all programming. We have not consulted on this as the change has no impact on broadcasters.



# A1. 2016 and 2006 BBC Agreements

## 2016 Agreement – Clause 9, Schedule 3

### 9. Code relating to provision for the hearing and visually impaired

(1) The BBC must, in providing the UK Public Services, observe a code drawn up by Ofcom, giving guidance as to-

(a) the extent to which the UK Public Services should promote the understanding and enjoyment by-

(i) persons who are hearing impaired;

(ii) persons who are visually impaired; and

(iii) persons with a dual sensory impairment,

of the programmes to be included in such services; and

(b) the means by which such understanding and enjoyment should be promoted.

(2) The code must include provision for securing that the BBC ensures that adequate information about the assistance for disabled people that is provided in relation to the UK Public Services is made available to those who are likely to want to make use of it.

(3) Before drawing up the code, Ofcom must consult-

(a) such persons appearing to them to represent the interests of persons falling within subparagraph (1)(a)(i), (ii) or (iii) of that section as Ofcom think fit; and

(b) the BBC.

(4) Ofcom must publish the code in such manner, having regard to the need to make the code accessible to-

(a) persons who are hearing impaired;

(b) persons who are visually impaired, and

(c) persons with a dual sensory impairment,

they consider appropriate.

## 2016 Agreement – Clause 5, Schedule 4

(3) Ofcom's Code on Television Access Services provided for under clause 59 of the 2006 Agreement continues to apply to the BBC under clause 59 of the 2006 Agreement until Ofcom issues a new code.

## 2006 Agreement – para 59

### 59. Code relating to provision for the deaf and visually impaired

(1) The starting point is that the BBC must, in providing the UK Public Television Services, observe the Code maintained by Ofcom under section 303 of the Communications Act 2003 (referred to in this clause as “the Act”). That is a code relating to provision for the deaf and visually impaired. The Code applies to some other broadcasters by virtue of statutory provisions, but would not apply to the provision of the UK Public Television Services by the BBC but for this clause.

(2) However, we intend that the Code should apply in a modified way. The rest of this clause

explains those modifications. These need to be read in conjunction with the detail of the Act, particularly section 303. The modifications apply only for the purpose of applying the Code, by virtue of this clause, to the provision of the UK Public Television Services by the BBC.

(3) The Code shall, as a general rule, apply separately to the provision of each of the UK Public Television Services by the BBC in the same way that it applies to the provision of Channel 4 by the Channel Four Television Corporation (but see paragraphs (4) and (7)).

(4) However, the Code shall have effect as if the excluded programmes were those agreed for

the purposes of this clause instead of those applicable to Channel 4. “Excluded programmes” are the descriptions of programmes set out in the Code under section 303(7) of the Act. (Excluded programmes play an important role – see in particular section 303(4) to (9) of the Act.)

(5) In agreeing the excluded programmes, the parties must have regard, in particular, to the

matters set out in paragraphs (a) to (f) of section 308(8) of the Act.

(6) The exclusions that may be agreed—

(a) may include different descriptions of programmes in relation to different UK Public Television Services; and

(b) in the case of a UK Public Television Service which the parties are satisfied (having regard to the matters mentioned in paragraph (5) above) is a special case, may include all the programmes included in the service.

(7) The Code shall have effect as if the relevant date in relation to any of the UK Public Television Services were that fixed by paragraph (8) instead of the relevant date applicable to Channel 4. (The concept of “the relevant date”, which plays a role in section 303 of the Act, is defined by section 305.)

(8) The relevant date is—

(a) in the case of BBC One and BBC Two, 1st January 1997; and

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(b) in any other case, the date (whether before or after the making of this Agreement) when the provision of the service began or begins.

(9) The parties must agree whether a service is to be treated for the purpose of paragraph (8)(b) as a continuation of a service previously provided by the BBC rather than as a new service.

(10) Before agreeing anything for the purposes of this clause, the parties must consult such

persons appearing to them to represent the interests of persons falling within section 303(1)(a)(i), (ii) or (iii) of the Act as they think fit.

(11) The BBC must publish anything agreed for the purposes of this clause in such manner as

it considers appropriate, having regard to the need to make what has been agreed accessible to—

(a) persons who are deaf or hard of hearing, and

(b) persons who are blind or partially sighted.

(12) This clause must be interpreted in accordance with, and have effect subject to, clause 92,

which explains such things as “agreed” and “the parties”, and how the process of reaching agreement should work.

(13) In this clause, references to the Code and section 303 of the Act must be interpreted having regard to clause 60.

## A2. Equality Impact Assessment

- A2.1 In this annex, we assess the potential impact of our decisions on the following equality groups: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation<sup>33</sup>. We refer to groups of people with these protected characteristics as ‘equality groups’.
- A2.2 An Equality Impact Assessment (“EIA examines the impact our policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.
- A2.3 We have not considered it necessary to carry out separate EIAs in relation to the additional equality groups in Northern Ireland: political opinion and dependents. This is because we anticipate that our decisions would not have a differential impact in Northern Ireland compared to consumers in general.

### Equality Impact Assessment

- A2.4 We consider that our decisions may have greater implications for the following equality groups:
- a) people with disabilities
  - b) people whose age-related conditions may make them more vulnerable (who we consider under the protected characteristic of ‘age’)<sup>34</sup>
  - c) people belonging to these or other equality groups to the extent that those people use access services for reasons other than sight or hearing impairment.
- A2.5 We consider that our decisions to require the BBC to continue to observe our TV Access Code in relation to its television services is likely to have a neutral impact on the relevant equality groups. The TV Access Code sets out the minimum requirements for the BBC broadcast channels, which in practice the BBC regularly exceeds (see para 2.2).
- A2.6 We consider that our revisions to the TV Access Code (see Annex 3) are unlikely to have any impact on the relevant equality groups. We do not consider that they involve any substantive changes to the requirements for UK broadcasters in relation to access service provision. However, we expect that our decisions may improve the clarity of the Code for broadcasters and users of access services, assisting understanding of the requirements.

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<sup>33</sup> As defined in the Equality Act 2010

<sup>34</sup> People with sight and/or hearing impairment also tend to be older. An estimated one in five people aged over 75 have sight loss (see RNIB’s [Key Information and Statistics](#)), and more than seven in ten people over 70 live with hearing loss (see Action on Hearing Loss’ [Facts and Figures](#)).

## Conclusion

- A2.7 Overall, we do not consider that our decisions are likely to have a detrimental impact on any of the relevant equality groups, including people with disabilities and older people.

## A3. Revisions to TV Access Services Code

- A3.1 This annex has been [published separately](#). The document is not fully accessible, including to those using screen readers. However, we have also published a clean version of the [TV Access Services Code](#) alongside this document.