



# Non-domestic TV channels: extension of transitional signing arrangements

Statement

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# About this document

Following a consultation published in October 2015, this document sets out Ofcom's decision to extend by 12 months the transitional period during which non-domestic channels with smaller audiences may meet their signing obligations by providing additional subtitling in lieu of signing.

Ofcom will publish a further statement in early 2016 setting out its decisions on the other proposals in the October 2015 consultation.

# Non-domestic TV channels: extension of transitional arrangements for signing

## Summary

- 1.1 Since January 2014, about 40 channels licensed by Ofcom for transmission to other Member States of the European Union (EU) (which we refer to as non-domestic channels) have been required by Ofcom to provide access services (including subtitling, audio description, and signing)<sup>1</sup>. In October 2015<sup>2</sup>, Ofcom consulted on proposals to change the signing requirements applying to these channels, including the proposal to extend by 12 months the transitional period during which non-domestic channels with smaller audiences are allowed to meet their signing obligations by providing additional subtitling in lieu of signing.
- 1.2 This statement sets out Ofcom's decision on the proposal to extend the transitional arrangements for signing requirements. Ofcom's conclusions on all other matters covered by the October 2015 consultation will be set out in a further statement planned for publication in early 2016.
- 1.3 Having regard to the views of the respondents to the consultation, Ofcom has decided to extend the transitional arrangements by one year, to the 31 December 2016. These arrangements allow broadcasters of qualifying channels to substitute their signing obligations by providing additional subtitling (comprising 5% of their qualifying hours) on top of their existing subtitling quota.

## Background

### Requirements under UK and European law

- 1.4 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 on how television can be made more accessible to people with sensory impairments. The code is to provide guidance as to 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).
- 1.5 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<sup>3</sup>.
- 1.6 Ofcom first published its Code on Television Access Services ('the Code') in 2004<sup>4</sup>. Initially, this access service scheme was applied to domestic channels only.

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<sup>1</sup> In 2016, the number of non-domestic channels required to provide access services will be 37. See: *Television channels required to provide television 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>2</sup> *Non-domestic TV channels: proposals to modify access service obligations*, Ofcom, 14 October 2015 (<http://stakeholders.ofcom.org.uk/consultations/nom-dom/>).

<sup>3</sup> These factors are listed under subsection 303(8) of the Act.

<sup>4</sup> For the current version of the Code, see: *Ofcom's Code on Television Access Services*, 13 May 2015 (<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2015/>).

However, the legislative position changed with the adoption by the European Union of the Audiovisual Media Service (AVMS) Directive , 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.

- 1.7 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’. 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’.
- 1.8 As Ofcom explained in 2012<sup>5</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 Communications Act set out the statutory regime that applies and section 303 requires Ofcom to publish the Code on Television Access Services”.

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

- 1.9 Having regards to its obligations under UK and European law, and following consultation<sup>6</sup> in 2012, Ofcom decided<sup>7</sup> to start applying access services requirements to non-domestic channels from 1 January 2014.
- 1.10 In relation to signing, the 2012 Statement said that, in line with the approach adopted for domestic channels, non-domestic channels that do not meet the relevant signing threshold set by the Code (i.e. channels with smaller audiences) are exempted from the statutory targets, and are instead required to include at least 30 minutes of sign-presented programming in their schedules each month, unless the broadcaster secures Ofcom’s consent to alternative arrangements in accordance with Annex 3 to the Code.
- 1.11 The 2012 Statement also provided<sup>8</sup> that, for a transitional period of two years ending on 31 December 2015, non-domestic channels with smaller audiences may provide additional subtitling in lieu of the signing requirements set out in paragraph 1.10 above. The purpose of the transitional arrangements 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.

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<sup>5</sup> *Access services on non-domestic channels*, Ofcom, 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)) (the ‘2012 Statement’); Paragraph 2.9.

<sup>6</sup> *Proposals for access services on non-domestic channels*, Ofcom, 25 May 2012 (<http://stakeholders.ofcom.org.uk/consultations/access-services-non-domestic/?a=0>).

<sup>7</sup> 2012 Statement.

<sup>8</sup> 2012 Statement; paragraph 2.61.

## Ofcom's 2015 consultation

1.12 In October 2015, Ofcom consulted<sup>9</sup> on proposals to:

- a) extend by 12 months the transitional period during which non-domestic channels with smaller audiences are allowed to meet their signing obligations by providing additional subtitling in lieu of signing;
- b) bring sign-presentation requirements for non-domestic channels into line with the arrangements applying to domestic channels transmitting within the UK<sup>10</sup>;
- c) allow non-domestic channels to meet their signing requirements by showing sign interpretation or subtitling (instead of sign-presentation) where these forms of assistance would better meet the needs of sign language users; consistent with the arrangements for domestic channels, the amount of assistance for sign language users should rise over time;
- d) require non-domestic channels permitted to adopt alternative arrangements to contribute rising amounts, as in the case of domestic channels; and
- e) 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).

1.13 Ofcom will address the comments made by respondents in relation to points (b) to (e) in a separate statement scheduled for publication in 2016. Responses to our proposal to extend the transitional arrangements are discussed below.

### Proposed extension of transitional arrangements

1.14 In the October 2015 consultation we explained that since the publication of the 2012 Statement we had met with representatives of most relevant national deaf groups, and corresponded with them. We also met most relevant broadcasters, and corresponded with them. However, as the discussions with and between broadcasters and national deaf groups have taken longer than expected, Ofcom will not be able to publish its decisions on the signing requirements which non-domestic channels with smaller audiences should be subject to after the transitional arrangements before the beginning of 2016.

1.15 Regardless of the outcome of the consultation, Ofcom's rules will permit (but 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

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<sup>9</sup> *Non-domestic TV channels: proposals to modify access service obligations*, Ofcom, 14 October 2015 (<http://stakeholders.ofcom.org.uk/consultations/nom-dom/>).

<sup>10</sup> Ofcom reviewed the signing requirements for domestic channels with smaller audiences in 2015; see: *Changes to signing arrangements for relevant domestic TV channels*, Ofcom, 13 May 2015 (<http://stakeholders.ofcom.org.uk/binaries/consultations/review-signing-arrangements-tv/statement/statement.pdf>).

accept. It would not be practicable for this process to be completed before the end of the current transitional period.

- 1.16 We explained in the consultation that, if the transitional arrangements ended in December 2015, we do not think broadcasters would have sufficient time to prepare and implement well thought through plans that address the needs of sign language users. We therefore proposed to extend the transitional period for an additional interim period of a 12 months, so that they have time to do this. During this period, qualifying channels would be subject to the same signing obligations as during the first two years of the transitional period, but would be able to substitute these by providing additional subtitling (comprising 5% of their qualifying hours) on top of their existing subtitling quota, should they wish.

## **Responses to Ofcom's question about extending the transitional arrangements for signing requirements**

- 1.17 Ofcom received seven responses to its consultation, including three from broadcasting-related bodies (the Commercial Broadcasters' Association (COBA), the Modern Times Group (MTG) and Sky, and three from the national deaf associations of Britain, Denmark and Sweden, as well as a response from the Consumer Communications Panel & Advisory Committee on Older and Disabled People ('CCP').
- 1.18 The Danish and Swedish national deaf associations and the CCP supported the proposal. The British Deaf Association criticised the length of time it had taken to put the necessary arrangements in train, but did not suggest an alternative course of action.
- 1.19 The broadcasting-related bodies did not object to the proposed extension, but suggested that more time and flexibility with regards the end of the transitional period might be needed to enable broadcasters to make arrangements depending on the requirements and challenges in particular markets. [COBA suggested that Ofcom establish access services for each territory and set the deadline for implementation a year from that point.](#)

## **Conclusion**

- 1.20 Taking account of the views of the respondents, Ofcom remains of the view that it would be reasonable to extend the transitional period for a further 12 months from 31 December 2015. This will provide a clear basis for broadcasters to continue meeting their existing obligations, and give broadcasters time to prepare and implement any amended arrangements that Ofcom may determine, having considered responses to the other proposals in its consultation.
- 1.21 Ofcom's initial view is that it would not be appropriate to extend the transitional arrangements beyond 31 December 2016, as broadcasting-related bodies have suggested might be appropriate. The reason is that this would remove an important incentive on broadcasters to make any necessary changes in a timely fashion, to the potential disadvantage of deaf TV viewers. Ofcom notes that, on the assumption that it publishes a statement on its decisions in the first quarter of 2016, this would leave at least 9 months for broadcasters to commission sign-presented programming for broadcast from 1 January 2017.

- 1.22 Broadcasters would not be required to propose alternative arrangements, but if they wished to do so, it would be up to them to draw these up and discuss them with national deaf associations. Ofcom notes that it has encouraged broadcasters to do this over the last two years, and that at least one broadcaster (MTG) has done so, in discussion with the Danish deaf association.
- 1.23 Therefore, Ofcom has decided to extend the transitional period until 31 December 2016. During this period, qualifying channels will be subject to the same signing obligations as during the first two years of the transitional period, but may choose to substitute these by providing additional subtitling (comprising 5% of their qualifying hours) on top of their existing subtitling quota, should they wish.