



Non-domestic TV channels: changes to access service requirements

Statement

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About this document

This document reports on Ofcom's decisions:

- (a) to modify the signing requirements of non-domestic channels to bring them in line with those applying to domestic channels; and
- (b) to extend access service requirements to certain countries outside the European Union to which the Audiovisual Media Services Directive applies.
- (c) to extend until 31 December 2017 the transitional period during which non-domestic channels with smaller audiences are allowed to meet their signing requirements by providing additional subtitling in lieu of signing

Contents

Section		Page
1	Summary	1
2	Timetable for implementation	5
3	Submissions to Consultation, and Ofcom's response	6
Annex		Page
1	Code on Television Access Services: amendments made	17
2	Code on Television Access Services: clean version	30
3	Ofcom's guidance to broadcasters of relevant channels with smaller audiences on arrangements for signing: amendments made	41
4	Ofcom's guidance to broadcasters of channels with smaller audiences on arrangements for signing: clean version	45
5	Analysis of financial impact on broadcasters	49

Section 1

Summary

Background

- 1.1 Ofcom has required broadcasters of qualifying domestic channels¹ to provide subtitles, audio description, and signing (collectively known as “access services”) since 2005. These access services enable people with impairments to their sight and/or hearing to access television.
- 1.2 Ofcom has required broadcasters of qualifying non-domestic channels² to provide access services since January 2014.
- 1.3 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%.
- 1.4 However, qualifying channels with smaller audiences³ - 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.
- 1.5 For an initial transitional period of two years ending on 31 December 2015, non-domestic channels were able to provide additional subtitling in lieu of these requirements. 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 users⁴.
- 1.6 From 1 January 2016, domestic channels have been required either to meet targets for sign-presented programming that would rise over time, or to contribute rising amounts to alternative arrangements.
- 1.7 In October 2015, Ofcom consulted⁵ on proposals to:
 - a) extend by 12 months the transitional period during which qualifying non-domestic channels with smaller audiences are allowed to meet their signing requirements by providing additional subtitling in lieu of signing;

¹ Channels licenced by Ofcom for transmission to the UK

² Channels licensed by Ofcom for transmission to other Member States of the European Union (EU)

³ 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. At the time of writing, all qualifying non-domestic channels have smaller audiences.

⁴ It is conceivable, for instance, that in countries where there is not a significant amount of sign-interpreted programming available (unlike the UK), sign language users might prefer more sign-interpreted programming to a smaller amount of sign-presented programming.

⁵ *Non-domestic TV channels: proposals to modify access service obligations*, Ofcom, 14 October 2015 (<http://stakeholders.ofcom.org.uk/consultations/nom-dom/>).

- b) bring sign-presentation requirements for qualifying non-domestic channels with smaller audiences into line with the arrangements applying to domestic channels transmitting within the UK;
 - c) allow qualifying non-domestic channels with smaller audiences 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 qualifying non-domestic channels with smaller audiences 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 applies (i.e. Iceland, Liechtenstein and Norway).
- 1.8 Ofcom has considered responses to the consultation, and has already published a statement confirming the extension of the transitional period to 31 December 2016⁶.
- 1.9 This final statement sets out Ofcom's decisions on the remaining issues, as well as the results of further consideration of the appropriate duration of the transitional period. These decisions are summarised below.

Ofcom's decisions

- 1.10 Ofcom has decided that it is necessary to extend the transitional period by a further 12 months to 31 December 2017. We have set out why this is necessary in paragraphs 1.14 to 1.18 below.
- 1.11 With effect from 1 January 2018, qualifying non-domestic channels with smaller audiences are required to either meet targets for sign-presented programming that would rise over time as shown in row 1 of the table below, or to contribute rising amounts (as shown in row 4 of the table below) to alternative arrangements approved by Ofcom that would contribute to the objective of making more sign-presented programming available.
- 1.12 However, if Ofcom is satisfied that sign language users in target countries would prefer another form of assistance instead of sign-presented programming, Ofcom will consider extra subtitling or sign-interpreted programmes. Consistent with the arrangements for domestic channels, any substitute requirements would rise over time as shown in rows 2 and 3 of the table below.

⁶ *Non-domestic TV channels: extension of transitional signing arrangements*, Ofcom, December 2015 (http://stakeholders.ofcom.org.uk/binaries/consultations/nom-dom/statement/Non-Doms_Signing_Extending_Transitional_Period.pdf).

Figure 1: Levels of signing requirements, substitute requirements, and contributions to alternative arrangements (*2015⁷ prices, subject to annual adjustments in line with CPI)

		Signing (from anniversary of notice date ⁸)	1 st to 2 nd	3 rd to 4 th	5 th to 6 th	7 th to 9 th	10 th onwards
1	Proposed requirements	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*	£24.5	£24.5k	£36.8k	£49.1k	£61.4k

1.13 With effect from 1 January 2018, qualifying non-domestic channels broadcasting to those member states of the European Economic Area (EEA) to which the European Union’s Audiovisual Media Services (AVMS) Directive applies (i.e. Iceland, Liechtenstein and Norway) will be required to provide television access services on the same basis as non-domestic channels broadcast to European Union member states (see paragraph 1.17 below). Given that both Iceland and Lichtenstein have very small populations, this is only likely to affect some channels broadcast to Norway.

Further extension of the transitional period

1.14 The purpose of the transitional period ending on 31 December 2015 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. In December 2015, Ofcom published its decision on (a) above, to extend by 12 months (to until 31 December 2016) the transitional period during which non-domestic channels with smaller audiences may meet their signing requirements by providing additional subtitling in lieu of signing. The intention was for this to allow sufficient opportunity for broadcasters to give effect to Ofcom’s decisions on signing arrangements, leaving at

⁷ The table at Figure 1 (and subsequent tables) of Ofcom’s 2015 Consultation showed the minimum contributions to alternative arrangements expressed in 2014 prices. As a result of the Consumer Price Index in 2015 being recorded at 0%

(<https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7g7>), Ofcom has not adjusted the minimum contribution level for 2015

⁸ The ‘notice date’ for the purpose of determining the access service obligations of non-domestic channels is 1 January 2013

least 9 months once Ofcom had published its final statement for broadcasters to implement changes, for broadcast from 1 January 2017.

- 1.15 We have not published a decision on consultation points b) to e) in early 2016 as intended. This is because:
- Additional time was allowed to encourage a greater degree of engagement from stakeholders and European deaf associations. Preferences of users with hearing impairments differ significantly between countries and services (for example, extra subtitling being less appealing on foreign language services which are already subtitled in that country). Therefore, Ofcom relies on the engagement of national deaf groups and broadcasters to be able to decide what arrangements would be most beneficial to sign language users in each country.
 - The time required for implementation can be expected to be greater than 9 months. Given that these requirements should start at the beginning of the year, to coincide with changes to Ofcom's list of qualifying channels, any decision published later than February 2016 would have risked an inadequate implementation period.
- 1.16 Consequently, we have decided that it is necessary to extend the transitional period by a further 12 months until 31 December 2017 to ensure that:
- Broadcasters and national deaf groups have sufficient opportunity to agree and propose alternative forms of assistance where appropriate
 - Broadcasters have time to prepare and implement well thought through plans that address the needs of sign language users, commissioning sign-presented programming where necessary
- 1.17 The requirements set out in b) to d) above will therefore apply from 1 January 2018. The requirements set out in e) (access service requirements applying to channels broadcast to Norway, Iceland and Lichtenstein) will apply from the same date, 1 January 2018; this will ensure that channels do not incur the expenditure that will be needed to commence access services until the impact of the signing requirement is known.
- 1.18 In the interim period, to 31 December 2017, qualifying channels will be subject to the same signing requirements⁹ as during the first three years of the transitional period, and will still be able to substitute these requirements by providing additional subtitling (comprising 5% of their qualifying hours) on top of their existing subtitling quota, should they wish.

⁹ http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/statement/Non_dom_access_services.pdf

Section 2

Timetable for implementation

Introduction

- 2.1 This section describes the timetable Ofcom envisages for implementation of the decisions summarised in section 1

Timetable for implementation of new requirements

- 2.2 On 6 July 2016 Ofcom published a list of domestic and non-domestic channels which qualify to provide access services in 2017¹⁰. Ofcom determined which non-domestic channels qualify to provide access services in 2017 on the same basis as for 2016, assuming that channels will opt to continue providing additional subtitling in lieu of sign-presentation, unless they told us otherwise.
- 2.3 National deaf groups and broadcasters should inform Ofcom by 31 December 2016 whether they are content with the default requirements for sign presentation, or whether they wish to propose the substitute requirements of more subtitling (e.g. for programmes produced in their national languages) or sign-interpretation.
- 2.4 In the light of any information received, and of previous discussions with national deaf associations and broadcasters, Ofcom will make a provisional decision on which requirements should apply to non-domestic channels, and will inform broadcasters accordingly by 31 January 2016. In the event that further discussion with national deaf associations is required, this and subsequent dates may be extended, as advised by Ofcom.
- 2.5 Broadcasters will have until 28 February 2017 to confirm that they will implement the requirements set out in the provisional decision, or to propose alternative arrangements that they consider would meet the same objectives, and would comply with Ofcom's guidance to broadcasters of channels with smaller audiences on arrangements for signing (Annex 4).

Ofcom will aim to make a final decision on the signing requirements of non-domestic channels by 31 March 2017, and will provide broadcasters with an indicative list of channels likely to be affected by the same date. Ofcom expects to publish the confirmed list in the usual way by 30 June 2017, at which point broadcasters will need to prepare meet the signing and other access service requirements by 1 January 2018.

- 2.6 We note that proposals of alternative arrangements in 2017 are to be made by 28 February, whereas in subsequent years these proposals should be made by 30 June (see Annex 3, A3.6). This is because the instigation of alternative arrangements can be expected to take longer in the run up to implementation than in subsequent years.

¹⁰ http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv_access_serv/channels-access-services-2017/

Section 3

Submissions to Consultation, and Ofcom's response

Respondents

- 3.1 Ofcom received responses from:
- a) five national Deaf associations (representing Deaf people in Denmark, Romania, Spain, Sweden and the UK);
 - b) Modern Times Group, Sky, and from the Commercial Broadcasters' Association (COBA) which represents commercial multichannel broadcasters¹¹; and
 - c) Ofcom's Communications Consumer Panel and the Advisory Committee for Older and Disabled People ('CCP').
- 3.2 These responses have been posted on Ofcom's website, with the exception of those from the Spanish and Swedish deaf associations, which requested confidentiality.¹²
- 3.3 Ofcom has already considered responses to its proposal to extend to 31 December 2016 the transitional period during which broadcasters may provide additional subtitling in lieu of signing, and published its decision to adopt the proposal at the end of last year¹³.
- 3.4 This Section summarises respondents' submissions to the remaining proposals in the consultation, together with Ofcom's observations and conclusions.

Summary of consultation proposals

- 3.5 Ofcom's 2015 Consultation proposed that, consistent with the arrangements for domestic channels:
- a) no changes should be made to the signing requirements for non-domestic channels with larger audiences (i.e. above the signing thresholds as set out in Annex 2 to the Code);
 - b) qualifying non-domestic channels with smaller audience shares (those with audiences below the signing threshold) should be required either to meet targets for sign-presented programming that will rise over time (in the same way as requirements on domestic channels), or to contribute rising amounts to

¹¹ The members of the Commercial Broadcasters' Association (COBA) are A+E, Chinese Channel, Discovery, NBC Universal, QVC, Scripps, Sky, Sony, Turner, Viacom and Walt Disney.

¹² <https://www.ofcom.org.uk/consultations-and-statements/category-2/nom-dom>

¹³ *Non-domestic TV channels: extension of transitional signing arrangements*, Ofcom, December 2015 (http://stakeholders.ofcom.org.uk/binaries/consultations/nom-dom/statement/Non-Doms_Signing_Extending_Transitional_Period.pdf)

alternative arrangements, as shown in rows 1 and 4 respectively of the table at Figure 2 below;

- c) Ofcom should consider substituting targets for extra subtitling or for sign-interpreted programmes, if it was satisfied that sign language users in the European territory concerned would prefer another form of assistance to sign-presented programming;
- d) in relation to substitute requirements, the amount of assistance for sign language users should rise over time, as shown in rows 2 and 3 of the table at Figure 2 below;
- e) domestic channels made available by the relevant broadcaster in the Republic of Ireland should be exempted from meeting signing requirements there; and
- f) non-domestic channels targeting Norway, Iceland and Liechtenstein (“EEA EFTA States”) which meet the same eligibility criteria as other non-domestic channels¹⁴ should be required to meet the same access service requirements.

Figure 2: Levels of proposed requirements, substitute requirements, and contributions to alternative arrangements

		Signing (from anniversary of notice date)	1 st to 2 nd	3 rd to 4 th	5 th to 6 th	7 th to 9 th	10 th onwards
1	Proposed requirements	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*	£24.5	£24.5k	£36.8k	£49.1k	£61.4k

* 2015 prices, subject to annual adjustments in line with CPI

3.6 We deal separately below with each of the main proposals.

¹⁴ See paragraph 5.5 of Ofcom's 2015 Consultation for the audience share and signing thresholds for EEA EFTA States

Signing arrangements for non-domestic channels with larger audiences

Ofcom's proposal

- 3.7 Ofcom proposed that no changes should be made to the signing requirements for non-domestic channels with larger audiences (i.e. above the signing thresholds as set out in Annex 2 to the Code).

Consultation responses

- 3.8 None of the respondents objected to this proposal.

Ofcom's decision

- 3.9 Ofcom has decided to adopt the proposal outlined in paragraph 3.7 above, though for the time being, there are no non-domestic channels with audiences exceeding the signing thresholds set out in Annex 2 to the Code.

Rising requirements in relation to signing

Ofcom's proposals

- 3.10 Ofcom proposed that smaller qualifying non-domestic channels should be required either to meet targets for sign-presented programming that would rise over time, or to contribute rising amounts to alternative arrangements (adjusted annually for inflation using CPI¹⁵), as shown in rows 1 and 4 respectively of the table at Figure 1 and Figure 2 above.

Consultation responses

- 3.11 There was general support for the proposals from those national Deaf associations that commented (Denmark, Spain, Sweden, UK), as well as the CCP. The Romanian Deaf Association commented generally that Deaf people in Romania preferred sign language, that reading (subtitles) was a last resort, and that they welcomed the wider availability of sign-interpreted news in Romania as a result of local legislation.
- 3.12 Broadcasters and COBA were in general opposed to the proposals, but supported some aspects:
- a) COBA welcomed Ofcom's reiteration of its earlier decision that "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"¹⁶ and
 - b) on the basis that the proposals would be adopted, Sky, MTG and COBA agreed with Ofcom's proposal that broadcasters should be permitted to propose alternative arrangements that would meet the same objectives as the signing requirements or the substitute requirements, as appropriate. Accordingly,

¹⁵ The Consumer Prices Index.

¹⁶ Ofcom's 2015 Consultation, paragraph 2.26(d)

broadcasters also agreed with references to 'sign-presented programming' being replaced with 'accessible programming' in the Guidance.

Higher targets

- 3.13 Two Deaf associations (Spain, UK) suggested that higher signing targets would be appropriate; of these, the British Deaf Association suggested that the level of sign-presentation should increase to a minimum of 120 minutes from the tenth anniversary of the notice date, instead of the 75 minutes proposed.

Rationale for proposed regulation

- 3.14 Sky said that, before imposing additional requirements on non-domestic channels, it should consider all relevant circumstances, including the share of viewing of the channel in non-domestic territories, the availability of access services on domestic services, and the needs of disabled viewers in local markets. It said that Ofcom's proposals were linked inextricably to its proposals for access services on domestic channels, rather than being based on any premise that existing provision is currently deficient in EU Member States.
- 3.15 Sky said that it disagreed with the changes Ofcom has made to signing arrangements for domestic channels; in particular, it said 'the decision to impose a three-fold increase in funding for the [British Sign Language Broadcasting Trust] was arbitrary, disproportionate and risks adversely affecting the provision of other access services in new markets such as on demand programming'.
- 3.16 Sky's preference was for proposals to be based on a better understanding of a market failure or the specific need for access services in each Member State. MTG and COBA made similar points. They said that Ofcom should gauge the local preferences for deaf sign language users, assess the practicality of each option and set requirements accordingly; non-domestic channels in countries with relatively low numbers of sign-language users (such as Ireland, Denmark, Croatia and Estonia) should be exempted from signing requirements on grounds of proportionality.
- 3.17 COBA added that it was impossible to comment on the appropriate level and the time frame of the proposed requirements until it is clear which types of access service are required in each market.

Costs

- 3.18 COBA and MTG said that Ofcom should examine the costs for industry in more detail, to understand in particular how these might vary across different markets. For example, COBA suggested that:
- a) a range of technical issues would influence costs in different ways. For example, they might find it difficult to obtain the additional bandwidth necessary to implement requirements;
 - b) broadcasters that had not previously commissioned programmes in certain EU markets would have to deal both with the costs of organising this work, and the time that it would take; and
 - c) Ofcom's assumption that non-labour costs would vary in the same proportion as labour costs failed to take account of the costs associated with studio space, production and post-production equipment, and rights clearances.

- 3.19 COBA also expressed concern that, as many non-sign language users prefer not to watch programmes which are signed, this could have an adverse effect on broadcasting revenues.

Technical issues

- 3.20 COBA said that technical issues could render the provision of some access services difficult if not impossible to provide in some markets. They included the large number of distribution platforms in some markets, the need for extra spectrum capacity for some access services (which is not always available on some platforms), and the lack of technology to superimpose signers in programmes to provide sign-interpreted content.

Ofcom's observations and conclusions

Higher targets

- 3.21 Ofcom understands why some Deaf associations that responded would like to see higher targets for signed programming. However, we do not agree that this would be appropriate given the likelihood that this would result in higher costs for access services overall, and might result in some channels becoming exempt from access services. This would have a detrimental effect on all access services users, including those Deaf people who use subtitling.

Rationale for proposed regulation

- 3.22 As regards the points made by Sky, Ofcom considers that its proposals do indeed result from careful consideration of all relevant circumstances, including the share of viewing of non-domestic channels in relevant EU Member States, and the preferences of Deaf people. Share of viewing is a key criterion in determining whether or not non-domestic channels qualify to provide access services. In drawing up the proposals, Ofcom carefully considered the views expressed to it by national Deaf associations. Sky does not explain why it considers the presence or absence of access services on local services to be a relevant factor, and Ofcom does not consider that this bears on its duty to facilitate accessibility to qualifying non-domestic channels.
- 3.23 Ofcom does not agree with Sky's view that the signing arrangements for domestic channels are arbitrary, disproportionate and risk adversely affecting the provision of access services for on demand programming. The rationale for Ofcom's decisions was set out in the 2014 Consultation and the 2015 Statement¹⁷. In relation to non-domestic channels:
- a) the proposals were developed specifically to ensure that they were consistent with the rules applied to domestic channels, while providing as much flexibility as possible to take account of the varying needs and preferences of Deaf people in different EU Member States;
 - b) in devising the proposals, we took account of the views expressed by Deaf associations. It was clear from these that the Deaf associations were keen to

¹⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/review-signing-arrangements-tv/statement/statement.pdf>

see an increase in accessible programming, but varied in their views as to which forms of assistance would be most appropriate;

- c) as with the rules for domestic channels, the proposals limit the amount of assessed expenditure on access services (including signing) to no more than 1% of relevant turnover, to protect broadcasters from disproportionate burdens; and
- d) Ofcom sees no necessary impact on the provision of access services for on-demand programming, which is regulated under different provisions.

- 3.24 We agree with Sky that Ofcom's proposals are inextricably linked to the signing arrangements that Ofcom has put in place for domestic channels; indeed, we explained in the consultation document Ofcom's view that 'we are bound by the AVMS Directive to ensure that all television services licensed by Ofcom and intended for reception of one or more Member States of the European Union comply with United Kingdom legislation and in particular the Communications Act 2003 ...'¹⁸.
- 3.25 Neither Sky nor the other respondents explained why they considered that alternative approaches are consistent with legal requirements and are open to Ofcom. Nor did they suggest how the approaches they advocated could be implemented in ways that would meet Ofcom's duty to regulate in ways that are transparent and consistent.
- 3.26 The suggestion from COBA, MTG and Sky that regulation should be based on an assessment of market failure or specific needs for access services in each EU Member State appears to be premised on beliefs that it is possible to arrive at an objective assessment of market failure / specific needs for access services for each country, and that this would enable different solutions to be crafted for each market that would nonetheless comply with the requirements upon Ofcom to regulate broadcasters according to the same system of laws, and in accordance with the principles of transparency and consistency. Ofcom sees no reason why an objective assessment of market failure or specific needs for access services should be made. Ofcom's proposals already incorporate flexibility to take account of the specific preferences of Deaf people in each EU Member State, to the extent compatible with an approach founded in the same system of laws.

Costs

- 3.27 Ofcom notes that broadcasters seek both flexibility over the way in which the accessibility needs of Deaf people are met, and certainty about the costs that will arise, even though these will vary according to decisions that cannot be taken until the regulatory framework is in place. It is for this reason that Ofcom's impact assessment looked at each possible scenario.
- 3.28 Ofcom remains of the view that, in the absence of actual cost data, it is reasonable to estimate costs in non-domestic markets by applying a factor to UK cost data, to reflect the difference between labour costs in the UK and the relevant non-domestic market. Ofcom notes that none of the respondents suggested an alternative methodology, and does not consider that it would be proportionate to commission detailed country-by-country assessments.

¹⁸ See, for example, paragraphs 2.11 and 2.12 of the 2015 Consultation.

- 3.29 As regards the particular points made by COBA, Ofcom:
- a) notes that the provision of signing does not require additional bandwidth, as both sign-presentation and sign-interpretation are visual means of communication that must be integrated into the programme. At present, there are no viable technical solutions that would allow signing to be offered as an option, as is possible with subtitling and audio description;
 - b) accepts that commissioning signed programmes will be an unfamiliar process for some broadcasters, and that sourcing these may take time. It is for this reason that Ofcom has given individual broadcasters advance notice of the likelihood that their channels will be subject to the new signing requirements, and that it will aim to confirm this about six months before provision should begin from January 2018. Ofcom notes that the set-up costs associated with signed programmes will occur in the year before provision of signed content (or alternative arrangements) begins, which will help to spread the burden; and
 - c) notes COBA's view that many non-sign language users prefer not to watch programmes which are signed. As the signing targets are very small in relation to the total amount of content broadcast, and that the 7am to 11pm window for broadcasting signed programmes allows ample scope to schedule such programmes at times when little or no advertising revenue is at stake, Ofcom believes that this problem can be managed in ways that eliminate or mitigate substantially the impact on broadcasting revenues.
- 3.30 Ofcom will ask broadcasters to supply actual cost data during 2017, so that this can be used in assessing which channels qualify from 2018 onwards.

Technical issues

- 3.31 As explained above, the provision of sign-interpreted or sign-presented content does not require any additional spectrum capacity, so this should not pose difficulties with the provision of signed content on multiple platforms – if they can carry programming without signing, they can also carry signed programming. By the same token, the provision of additional subtitled content should not pose technical problems - under the transitional arrangements, relevant channels have opted to provide additional subtitling in lieu of signing, and this can require a small amount of additional spectrum capacity (although the scope in some cases to multiplex channels means that this is not always necessary). None of the relevant broadcasters has advised Ofcom that they are unable to fulfil the subtitling requirements for technical reasons, so we assume that they have dealt successfully with any obstacles. If this is not the case, broadcasters should contact Ofcom to explain the situation. Finally, Ofcom notes that technology that permits the superimposition of signers on programmes to provide sign-interpreted programmes has been in use in many European markets for several decades, so we are not persuaded that this capability is lacking in those markets.
- 3.32 Accordingly, Ofcom has decided that:
- a) targets for signed programming should rise over time as proposed in the 2015 Consultation, and that any contributions to alternative arrangements should also rise over time as proposed, and be adjusted annually for inflation using CPI; and
 - b) relevant amendments should be made to the Code and Guidance as summarised in Annexes 1 and 3.

Substitute requirements

Ofcom's proposals

- 3.33 Ofcom proposed that, in lieu of targets for sign-presentation, it should be prepared to consider substituting targets for extra subtitling or for sign-interpreted programmes, if it was satisfied that sign language users in the EU Member State concerned would prefer another form of assistance to sign-presented programming. In this event, the requirement upon broadcasters would be to deliver the substitute form of assistance, or to propose alternative arrangements.

Consultation responses

- 3.34 Deaf associations have made clear to Ofcom their desire for flexibility in how their accessibility needs are met, to allow for the possibility of sign-interpretation or subtitling (particularly in relation to programmes produced originally in domestic rather than foreign languages). This desire was reiterated in a number of consultation responses from Deaf associations (Denmark, Spain, Sweden). For its part, the BDA was sceptical that that "substitute requirements" would meet the needs of deaf people whose first and/or preferred language is sign language, and did not wish to Ofcom to depart from the requirement for signing set out in legislation.
- 3.35 Broadcasters agreed that Ofcom should have the flexibility to consider substitute requirements in lieu of sign-presentation, though both COBA and Sky expressed disappointment that the statutory framework excluded the possibility of meeting requirements through on-demand programming.

Ofcom's observations and conclusions

- 3.36 We note the BDA's comments that "substitute requirements" will not meet the needs of many deaf people whose first and / or preferred language is sign language. As we explained in the consultation, Ofcom will only consider proposed substitute requirements if it is satisfied, having regard to the views of the relevant national Deaf association, that these would better meet the needs of Deaf people. We also note the suggestion by broadcasters that the proposals were not supported by an analysis of the demand for signed content.
- 3.37 We note the regret expressed by broadcasters that the law excludes the provision of content on-demand as a possible set of alternative arrangements, but share COBA's view that this is the case, pending any revision in the law.
- 3.38 Ofcom has therefore decided that:
- a) in the event that sign language users in particular EU Member States indicate a preference for additional subtitling or sign-presented content rather than sign-presented programming, it will consider substituting the requirement to provide sign-presented content with requirements to provide sign-interpreted or subtitled content. In assessing the preferences of sign language users, Ofcom will give due weight to the views of National Deaf Associations; and
 - b) relevant amendments should be made to the Code and Guidance as summarised in Annex 1.

Signing arrangements for UK channels available in the Republic of Ireland

Ofcom's proposal

- 3.39 Ofcom proposed that domestic channels made available by the relevant broadcaster in the Republic of Ireland should be exempted from meeting signing requirements there.
- 3.40 As noted in Ofcom's 2015 Consultation¹⁹, most of these channels include sign-interpreted programmes using British Sign Language ('BSL'). The sign language used in the Republic of Ireland (Irish Sign Language) differs from BSL. 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.

Consultation responses

- 3.41 None of the Deaf associations commented specifically on Ofcom's proposals. Broadcasters and COBA generally agreed with Ofcom's proposal to exempt non-domestic channels broadcast from the UK into the Republic of Ireland from signing requirements on the grounds that it would be unreasonable for broadcasters to be made subject to double signing requirements, particularly given the costs that this would entail and anecdotal evidence that Deaf viewers in the Republic had viewed sign-interpreted programming from the UK.

Ofcom's observations and conclusions

- 3.42 Ofcom remains of the view that it would be disproportionate to require domestic channels to meet additional signing requirements if they are also made available as non-domestic channels in the Republic of Ireland. Ofcom has therefore decided that domestic channels that are subject to signing requirements in the UK should not be required to meet additional signing requirements by virtue of the fact that they are also non-domestic channels in the Republic of Ireland.

Access services requirements for channels serving EEA EFTA States

Ofcom's proposals

- 3.43 As the rights and requirements derived from the AVMS Directive have been extended to apply to Norway, Iceland and Liechtenstein ('EEA EFTA States')²⁰, Ofcom said that it would be appropriate to regulate non-domestic channels targeting EEA

¹⁹ Paragraph 4.31

²⁰ 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.

countries in the same way as non-domestic channels targeting EU Member States other than the UK.

- 3.44 Accordingly, the 2015 Consultation proposed that non-domestic channels targeting these countries which meet the same eligibility criteria as other non-domestic channels²¹ should be required to meet the same access service requirements with effect from 1 January 2017. We said that this should give affected broadcasters sufficient opportunity to prepare for the access services requirements that would apply from 2017.

Consultation responses

- 3.45 None of the Deaf associations commented specifically on Ofcom's proposals. Sky, MTG and COBA made similar points in relation to non-domestic channels in Norway as those outlined in paragraphs 3.14 to 3.20 above: namely, that access service requirements should be specific to an analysis of market need; that it should be subject to a technical feasibility study.
- 3.46 In other points:
- a) COBA said that Ofcom should not assume that the costs of providing access services in Norway would correspond to those in Sweden and Denmark given the disparity in average hourly labour costs; and
 - b) MTG said that Ofcom should assess the technical feasibility of providing access services in EEA EFTA states

Ofcom's observations and conclusions

- 3.47 Ofcom's observations in relation to the points referred to in paragraph 3.45 and 3.46 are the same as those set out in paragraphs 3.21 to 3.31 above.
- 3.48 As regards the other points:
- a) Ofcom agrees with COBA that it may not be appropriate to assume that costs in Norway will broadly equate to the estimates for Sweden and Denmark, given that labour costs differ. For this reason, in the revised impact assessment (Annex 5), Ofcom has taken the same approach as for estimates of costs in EU Member States – we have applied a factor to UK costs that reflects labour costs in Norway. On this basis, as the revised impact assessment shows, the net result of this is that it is unlikely that any channels will be required to provide access services in 2018.²²
 - b) the consultation provided an opportunity for broadcasters to raise specific concerns about technical issues, though none chose to do so. This is not surprising – as explained in paragraph 3.31 above, signing requires no additional spectrum. Subtitling is common in Norway, as is audio subtitling (which, like audio description, may require additional spectrum capacity in some

²¹ See paragraph 5.5 of Ofcom's 2015 Consultation for the audience share and signing thresholds for EEA EFTA States

²² Ofcom has decided that Access service requirements applying to channels broadcast to Norway, Iceland and Lichtenstein will apply from the 1 January 2018 (see paragraph 1.17)

circumstances), while plans for audio description by local broadcasters are being developed²³. In any case, paragraph 22 of Ofcom's Code allows Ofcom to exempt broadcasters from providing particular access services if it is satisfied that this would be impracticable on grounds of technical difficulty.

- 3.49 Ofcom has therefore decided that non-domestic channels in EEA EFTA countries which meet the same eligibility criteria as other non-domestic channels²⁴ should be required to meet the same access service requirements with effect from 1 January 2018. For the present, it appears unlikely that any non-domestic channels made available in EEA EFTA countries will meet the eligibility criteria, though Ofcom will keep the situation under review.

²³ <http://www.medialt.no/news/en-us/audio-description-one-step-further-new-ad-research-project/926.aspx>

²⁴ See paragraph 5.5 of Ofcom's 2015 Consultation for the audience share and signing thresholds for EEA EFTA States

Annex 1

Code on Television Access Services: amendments made

[deletions to the previous Code are scored through; additions are underlined. Explanatory notes in italics do not form part of the Code. Paragraphs have been renumbered as appropriate]

1. This code²⁵ 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 extended²⁶. 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 Table 1 of this Code; and

²⁵ 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')

²⁶ 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 2013²⁷.

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 as any digital television programme services (DPS) provided by the Welsh Authority (including S4C Digital). The BBC Agreement²⁸ 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 15 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.

²⁷ 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) ('2012 Statement')

²⁸ The BBC Agreement can be found at the following link: 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 programmes²⁹ other than advertisements and programmes that have been excluded by reference to the factors summarised in paragraph 15. 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.
9. *[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

10. 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 below³⁰.~~

Domestic and non-domestic channels with larger audience shares

11. 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.³¹

²⁹ 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.

³⁰ 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/. 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/>.

³¹ 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/. 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 targets³² 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

12. 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.

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>

³² 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.

<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>

13. 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 requirements	30 minutes	35 minutes	45 minutes	50 minutes	60 minutes	65 minutes	75 minutes

Non domestic channels with smaller audience shares

14. Access service targets for non-domestic channels with smaller audiences are set out in Table 4 below. 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 signing³³</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>

Table 1: Access services targets

<u>Anniversary of relevant date or notice date</u>	<u>Subtitling</u>	<u>Signing</u>	<u>Audio Description</u>
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³³ Subject to Ofcom's agreement to impose substitute requirements.

		Relevant channels³⁴ (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%

[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

15. Ofcom may exclude programmes and services having regard, in particular, to:

³⁴ 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).

- a) the extent of the benefit which would be conferred by the provision of the assistance for disabled people in relation to the programmes;
- b) the size of the intended audience for the programmes;
- c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
- d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom ;
- 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

- 16. 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. 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.
- 17. Ofcom would expect to exclude television services from providing signing if they do not meet the relevant signing threshold. The signing thresholds for:
 - a) domestic television services is an average audience share of 1% or less;
 - b) non-domestic television services is the average audience share indicated in Annex 2.
- 18. 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.
- 19. 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.
- 20. 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-presented³⁵ programming specified in Table 42, such programming to be shown between 7am and 11pm local time. Ofcom will keep this requirement under review.

21. Having regards to the matters set out in paragraph 19, 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 month no less than the minimum amount of sign-presented³⁶ 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.
22. Broadcasters may, if they wish, propose alternatives to the arrangements set out in paragraphs 20 and 21, and Ofcom will consider these in the light of the factors set out in paragraph 15, 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.
23. 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 33 below) in the following year³⁷. 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.
24. Television services intended for reception by members of the public outside the European Union and European Economic Area are exempt from television access service requirements.

Technical difficulty

25. 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;

³⁵ Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

³⁶ see footnote 25

³⁷ 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.

- 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.

Cost

26. 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 20 and 21. These have been used to calculate the costs of three levels of provision:
- 27.
- 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.
28. 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.
29. 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'³⁸. Only broadcasters unable to afford Level Three costs will be exempt from provision altogether on grounds of cost.
30. In determining the applicable amount of relevant turnover, Ofcom will have regard to the most recent declarations of relevant turnover.
31. In the case of channels in common ownership³⁹, 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

³⁸ As defined in Ofcom's Statement of Charging Principles, 8 February 2005.

http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

³⁹ 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/>).

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.

32. 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.

Other exclusions

33. 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

34. 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.
35. 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.
36. 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 26 above. Ofcom will determine which level of annual target should apply in consultation with the licensee.

37. 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

38. Broadcasters are required to observe the standards set out in the Guidelines on Television Access Service Standards in Annex 4 to the code.
39. 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

40. 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.
41. 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~~39 above should be used.

Programming and scheduling

42. 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 20 and 21 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

43. 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

44. 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

45. This code is subject to periodic review.

Annex 2

Code on Television Access Services: clean version

1. This code 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 extended⁴⁰. 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) '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 Table 1 of this Code; and
 - f) the 'notice date' for the purpose of determining the access service obligations of non-domestic channels is 1 January 2013⁴¹.

⁴⁰ Directive 2010/13/EU has been extended to cover Norway, Iceland and Lichtenstein, which are member states of the European Economic Area.

⁴¹ 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) ('2012 Statement')

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 as any digital television programme services (DPS) provided by the Welsh Authority (including S4C Digital). The BBC Agreement⁴² 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, 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 15 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.

Targets

8. The statutory targets for broadcasters are expressed as percentages of the service, including all programmes⁴³ other than advertisements and programmes that have been excluded by reference to the factors summarised in paragraph 15. They rise from a low level to the ten-year targets prescribed by the Act, that is eighty per cent

⁴² The BBC Agreement can be found at the following link:

http://www.bbc.co.uk/bbctrust/governance/regulatory_framework/charter_agreement.html

⁴³ 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.

(80%) for subtitling, five per cent (5%) for signing and ten per cent (10%) for audio description. Different signing arrangements apply to 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.

9. 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

10. 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.

Domestic and non-domestic channels with larger audience shares

11. 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.⁴⁴

Table 1: Access services targets⁴⁵ for channels with larger audience shares

Anniversary of relevant date or notice date	Subtitling	Audio Description	Signing
First	10%	2%	1%
Second	10%	4%	1%
Third	35%	6%	2%
Fourth	35%	8%	2%
Fifth	60%	10%	3%

⁴⁴ 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/. 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/>.

⁴⁵ 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.

Sixth	60%	10%	3%
Seventh	70%	10%	4%
Eighth	70%	10%	4%
Ninth	70%	10%	4%
Tenth	80%	10%	5%

Domestic channels with smaller audience shares

12. 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.

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

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

13. Transitional arrangements for sign presentation requirements apply to all 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 3 below.

Table 3: Transitional arrangements for 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 requirements	30 minutes	35 minutes	45 minutes	50 minutes	60 minutes	65 minutes	75 minutes

Non domestic channels with smaller audience shares

14. Access service targets for non-domestic channels with smaller audiences are set out in Table 4 below. 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

Anniversary of notice date ⁴⁶	Subtitling	Audio Description	Sign-presented programmes	Substitute requirements for signing ⁴⁷	
				Annual quotas for sign-interpretation	or Annual quotas for additional subtitling
First	10%	2%	30 minutes per month	1%	5%
Second	10%	4%	30	1%	5%
Third	35%	6%	30	2%	7.5%
Fourth	35%	8%	30	2%	7.5%
Fifth	60%	10%	45	3%	10%

⁴⁶ The 'notice date' for the purpose of determining the access service obligations of non-domestic channels is 1 January 2013

⁴⁷ Subject to Ofcom's agreement to impose substitute requirements.

Sixth	60%	10%	45	3%	10%
Seventh	70%	10%	60	4%	12.5%
Eighth	70%	10%	60	4%	12.5%
Ninth	70%	10%	60	4%	12.5%
Tenth	80%	10%	75	5%	15%

Excluded programmes

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

16. 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. 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.
17. Ofcom would expect to exclude television services from providing signing if they do not meet the relevant signing threshold. The signing thresholds for:
- a) domestic television services is an average audience share of 1% or less;
 - b) non-domestic television services is the average audience share indicated in Annex 2.

18. 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.
19. 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.
20. Having regard to this, Ofcom requires that domestic channels with smaller audience shares (as defined in paragraphs 2(b) and (e) of this Code) should, from the first anniversary of the relevant date, broadcast each month no less than the minimum amounts of sign-presented⁴⁸ programming specified in Table 2, such programming to be shown between 7am and 11pm local time. Ofcom will keep this requirement under review.
21. Having regards to the matters set out in paragraph 19, 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 month no less than the minimum amount of sign-presented⁴⁹ 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.
22. Broadcasters may, if they wish, propose alternatives to the arrangements set out in paragraphs 20 and 21, and Ofcom will consider these in the light of the factors set out in paragraph 15, 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.
23. 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 33 below) in the following year⁵⁰. 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.

⁴⁸ Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

⁴⁹ see footnote 25

⁵⁰ 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.

24. Television services intended for reception by members of the public outside the European Union and European Economic Area are exempt from television access service requirements.

Technical difficulty

25. 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.

Cost

26. 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 20 and 21. 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.
27. 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.
28. 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'⁵¹. Only broadcasters unable to afford Level Three costs will be exempt from provision altogether on grounds of cost.

⁵¹ As defined in Ofcom's Statement of Charging Principles, 8 February 2005.
http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

29. In determining the applicable amount of relevant turnover, Ofcom will have regard to the most recent declarations of relevant turnover.
30. In the case of channels in common ownership⁵², 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.
31. 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.

Other exclusions

32. 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

33. 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.
34. 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

⁵² 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/>).

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.

35. 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 26 above. Ofcom will determine which level of annual target should apply in consultation with the licensee.
36. 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

37. Broadcasters are required to observe the standards set out in the Guidelines on Television Access Service Standards in Annex 4 to the code.
38. 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

39. 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.
40. 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 39 above should be used.

Programming and scheduling

41. 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 20 and 21 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

42. 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

43. 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

44. This code is subject to periodic review.

Annex 3

Ofcom's guidance to broadcasters of relevant channels with smaller audiences on arrangements for signing: amendments made

[deletions are scored through; additions are underlined]

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~~ relevant 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 9 of the Code on Television Access Services ('the existing obligations').

A3.2 Ofcom expects to notify broadcasters of ~~relevant~~ relevant channels with smaller audience shares (subject to the timely provision by them of information on relevant turnover⁵³) 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~~ relevant channels with smaller audience shares 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.

⁵³ 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.

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 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 2018, 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~~⁵⁴ 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

⁵⁴ 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).

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;
- 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

Anniversary of relevant date or notice date	Minimum annual contributions to alternative arrangements (from 1 January 2016, subject to annual adjustments for inflation ⁵⁵)
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

⁵⁵ 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.

A3.8 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.

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 fourth⁵⁶ - or later - anniversary of their relevant date)

Anniversary of qualifying date	2016	2017 ⁵⁷	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]

⁵⁶ i.e. channels with a relevant date earlier than 1 January 2012

⁵⁷ 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 4

Ofcom's guidance to broadcasters of channels with smaller audiences on arrangements for signing: clean version

Introduction

- A4.1 This Annex to the Code on Television Access Services ('the Code') sets out guidance for broadcasters of domestic and non-domestic channels with smaller audience shares on signing on television. 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 over the preceding year below the signing threshold as set out in Annex 2 to the Code; and
 - c) are excluded under section 303(9) of the Communications Act from the targets set out in paragraph 9 of the Code on Television Access Services ('the existing obligations').
- A4.2 Ofcom expects to notify broadcasters of channels with smaller audience shares (subject to the timely provision by them of information on relevant turnover⁵⁸) 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. For advance planning purposes, broadcasters currently subject to obligations under the Code that spend less than 1% of the relevant turnover of channels with smaller audience shares 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

- A4.3 From 1 January 2016, and in accordance with section 303(10)(c) of the Communications Act 2003, domestic channels with smaller audience shares should, from the first anniversary of the relevant date, broadcast each month no less than the minimum amounts of sign-presented programming specified in Table

⁵⁸ 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.

2 of the Code, such programming to be shown between 7am and 11pm local time. Ofcom will keep this requirement under review.

- A4.4 From 1 January 2018, 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.
- A4.5 Broadcasters of both domestic and non-domestic channels with smaller audience shares who wish to propose that the channels should not be subject to these regulatory requirements should follow the procedures below.

Alternative arrangements

- A4.6 Ofcom will consider proposals from individual broadcasters or groups of broadcasters of both domestic and non-domestic channels with smaller audience shares for alternative ways of achieving the objective of making more accessible programming⁵⁹ 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 A3.4 on broadcasters that have submitted alternative proposals, Ofcom will have regard to the matters set out in A3.7 (a)-(e) below.
- A4.7 Broadcasters may discuss possible alternative arrangements for 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 A3.4, as appropriate. Provided the proposals contain sufficient information, Ofcom will endeavour to decide whether or not to impose the regulatory requirements by 31 July.
- A4.8 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 accessible programming broadcast between 7am and 11pm;

⁵⁹ 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 5. 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 5: Minimum annual contributions to alternative arrangements

Anniversary of relevant date or notice date	Minimum annual contributions to alternative arrangements (from 1 January 2016, subject to annual adjustments for inflation ⁶⁰)
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

A4.9 The minimum annual contribution levels provided in Table 5 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

⁶⁰ 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.

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.

- A4.10 Domestic channels with a relevant date earlier than 1 January 2012 are subject to the transitional arrangements set out in Table 6 below. There are no equivalent transitional arrangements for non-domestic channels.

Table 6: Transitional arrangements for certain domestic channels: minimum annual contributions towards alternative arrangements (in lieu of monthly sign-presentation requirements) (for domestic channels that have reached the fourth⁶¹ - or later - anniversary of their relevant date)

Anniversary of qualifying date	2016	2017 ⁶²	2018	2019	2020	2021	2022 and after
Minimum annual contributions	£24.5k	£28.6k	£36.8k	£40.9	£49.1k	£53.2	£61.4k

- A4.11 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.
- A4.12 The level of minimum annual contribution is subject to review.
- A4.13 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.

⁶¹ i.e. channels with a relevant date earlier than 1 January 2012

⁶² 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 5

Analysis of financial impact on broadcasters

Introduction

A5.1 This Annex, together with the broader assessment of our policy options set out in the remainder of this Decision document, provides an assessment of the financial implications of Ofcom's decisions:

- 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 2018 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 applies in the same way as non-domestic channels transmitted in EU Member States.

A5.2 We note that the consultation impact assessment assumed an implementation date of 1 January 2017. However, as stated in this document, our publication of the final Statement has been delayed, and we are now implementing on 1 January 2018. This means that providers will have to meet higher thresholds for access services at the point of implementation. We would emphasise however that the requirements in 2018 are the same regardless of implementation date, as they relate to the notice date of 2013. Further, providers are aware that these changes to requirements will be implemented, and will have more than 12 months to prepare for implementation from the publication of this statement. We consider that this mitigates against the higher starting thresholds.

A5.3 This assessment is therefore largely unchanged by comparison with the version published in the consultation document. We have made some changes in relation to our assessment of the costs of providing access services in Norway, as set out below in paragraphs A5.59 to A5.67.

Bringing signing arrangements for non-domestic channels into line with domestic channels

A5.4 We have assessed four ways that broadcasters could meet the signing requirements described in Section 3 of this document, namely:

- a) showing progressively rising amounts of sign-presented programming on the qualifying channels; or
- b) providing sign interpretation on progressively rising proportions of the programming on qualifying channels; or

- c) providing extra subtitling (over and above that required to meet subtitling quotas intended for people with hearing impairments who do not use sign language) on qualifying channels; or
- d) paying financial contributions to alternative arrangements of sign-interpreted, sign-presented or subtitled programming.

A5.5 The minimum requirements Ofcom is proposing for each of these scenarios is summarised in the table at Figure 1 below.

Figure 1: Levels of proposed requirements, substitute requirements, and contributions to alternative arrangements

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

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

Background

A5.6 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 basis⁶³. The task was to give effect to Parliament's instructions in ways that avoided disproportionate burdens on broadcasters. In setting signing obligations, Parliament

⁶³ Code on Television Access Services (Statement), Ofcom, 26 July 2004

was aware that that there was only a small population of BSL users but still imposed increasing sign interpretation obligations.

A5.7 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
- b) only channels that would spend no more than 1% of relevant turnover on access services should be required to provide such 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. We are not proposing any changes to this cap.

A5.8 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 compare each channels spend on access services to 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).

A5.9 In practice, for each broadcasting group this means that if the expenditure on access services by all qualifying channels in common ownership exceeds 1% of the relevant turnover of channels in common ownership qualifying on audience share grounds, the calculations are performed again, this time assuming that subtitling targets are reduced by one third, or if necessary two thirds. If the expenditure on access services by all qualifying channels in common ownership still exceeds the 1% cap, then Ofcom would cease to estimate the cost of providing access services at group level, and would instead consider the cost to each individual channel⁶⁴.

Approach

A5.10 We have considered the financial impact 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. These obligations will start to apply to channels required to provide access services from 1 January 2018 onwards, but this list will not be determined until mid-2017 when full year data on revenues and audiences share data for 2016 is available.

A5.11 For the purposes of this assessment we have estimated the cost of meeting the different signing requirements; we set out the methodology used in detail below. It is worth noting from the outset that, following the implementation of Ofcom's decision, we will collect actual information on the costs of producing sign-presented programmes at periodic intervals. This will be used to identify the list of channels required to provide access services. However, in absence of this data, we consider

⁶⁴ 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

this to be a reasonable approach for the estimation of the likely impact of our decisions.

Cost data

A5.12 For the purpose of assessing the affordability of access service requirements, we have continued to use cost information collected in 2014 and used in the 2015 consultation (see paragraph A5.12 below). We have decided not to collect updated cost information for this statement for the following reasons:

- a) updating the cost information would involve significant resource and further delay implementation because Ofcom would need to collect additional data from broadcasters and rerun the analysis.
- b) It would be costly for broadcasters to provide additional data.
- c) If the trend in non-domestic countries follows that in domestic countries, then costs of providing access services will drop.⁶⁵
- d) We consider that the impact of our proposals is reduced by giving broadcasters more time until implementation.

A5.13 Specifically, broadcasters have provided us with data on:

- a) the percentage of their subtitling quota that was met by language subtitling 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.

A5.14 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.

Assumptions made in our analysis

A5.15 Clearly, there are a number of factors relevant to determining access service requirements 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:

⁶⁵ Between 2014 and 2016 we've seen a 10% drop in subtitling cost and a 24% drop in the cost of providing audio description for channels in the UK.

- 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 assessing the impact of analogous changes to signing requirements for UK channels⁶⁶;
- 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 requirements;
- 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; and
- f) Finally, we have assumed that broadcasters would not choose to exceed the minimum requirements summarised in Figure 1 above.

A5.16 We have used 2016 as the base year for our analysis. We have assumed that the channels included in this assessment will meet their access service obligations by showing extra subtitling during 2016.⁶⁷

A5.17 For reasons of commercial confidentiality, we are not including estimates of the impacts on individual channels or broadcasters, although both have been estimated

⁶⁶ 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.

⁶⁷ We have decided to further extend the transitional period that non-domestic channels are allowed to provide additional subtitling in lieu of the requirements in Figure 1 to 31 December 2017 (see Section 1). We expect most, if not all, channels in this analysis will meet their access service obligations by showing extra subtitling during the transitional period.

and considered. Instead, we are including anonymised estimates of the proportion of relevant turnover that broadcasting groups would have to pay for access services.

A5.18 For the reasons given in paragraphs 3.41 and 3.42 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.

A5.19 We discuss below the estimated impact of our proposals under the following scenarios:

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

A5.20 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 2 below. This will be a requirement under section 303(10)(c) of the Act. In 2018 all these channels would be required to show a minimum of 45 minutes of sign-presented programming per month, and would reach the maximum target of 75 minutes per month in 2023.

Figure 2 – Proposed sign-presentation monthly targets

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

A5.21 As discussed in Ofcom's 2015 consultation document⁶⁸, 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 using the UK costs as the starting point.

⁶⁸ See paragraph A6.18 of Ofcom's 2015 Consultation.

The cost of meeting the minimum sign-presentation requirements in 2018(45 minutes a month) in the UK is estimated to be £111k⁶⁹ in 2014 money⁷⁰.

A5.22 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.

A5.23 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 states⁷¹. We then applied the differential to the UK cost of sign-presentation to estimate the cost of sign-presentation 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 Figure 3 below. In this scenario, in 2018 all the non-domestic channels would be required to provide a minimum of 45 minutes per month of sign-presented programmes on their channels, and would reach the maximum target of 75 minutes per month in 2023.

Figure 3 – Estimated costs per channel of providing sign presentation in different EU Member States (costs and estimates shown in 2014 money)

Country	Percentage difference in labour costs compared to UK	Estimated annual costs of sign-presentation ⁷²		
		<u>2018</u>	<u>2020</u>	<u>2023</u>
UK	-	£110,850	£147,800	£184,750
Denmark	80.55%	£200,136	£266,848	£333,560
France	55.00%	£171,818	£229,090	£286,363
Hungary	-67.14%	£36,420	£48,560	£60,700
Italy	26.85%	£140,612	£187,483	£234,353
Netherlands	52.58%	£169,132	£225,509	£281,887

⁶⁹ 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 £60,000⁶⁹ in the UK. Indexing this for inflation using CPI, the equivalent cost in 2014 would be almost £74k for 30 minutes of sign-presented programming a month and £111k for 45 minutes a month. 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>)

⁷⁰ As noted at paragraph A5.2 we have decided to continue to use 2014 cost data.

⁷¹ source: Eurostat, *Labour costs annual data* (<http://ec.europa.eu/eurostat/web/labour-market/labour-costs/main-tables#>), retrieved 7 March 2016.

⁷² Assumes that broadcasters produce two programmes of the minimum monthly requirement in length and repeat them six times. Broadcasters often schedule frequent repeats of programmes. Repeat rates vary, but six times is not uncommon.

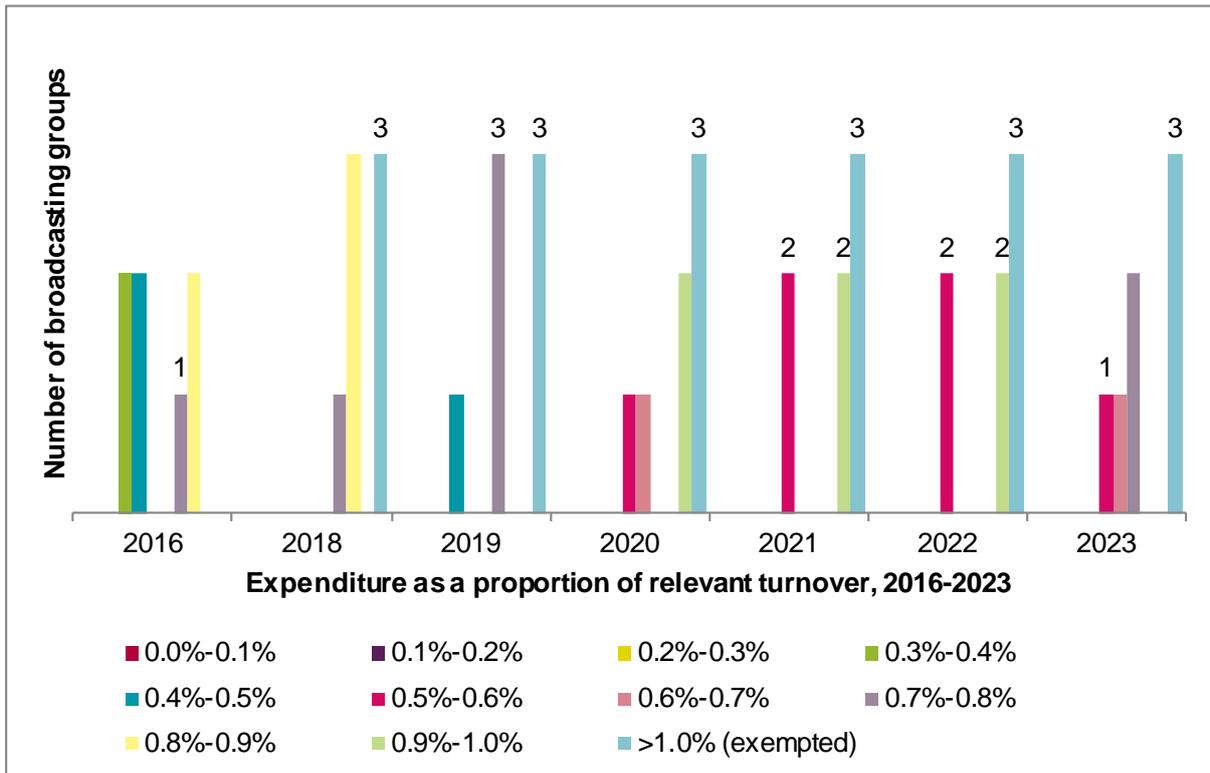
Poland	-62.44%	£41,637	£55,516	£69,395
Sweden	67.55%	£185,727	£247,636	£309,545

A5.24 We have used these estimates in an assessment of the impact that sign-presentation costs would have on overall access service costs.

A5.25 For reasons of commercial confidentiality, it would not be appropriate to publish the results for each channel or broadcasting group. Instead, Figure 4 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 2018, the first year these channels would be showing sign-presented programmes, we estimate that one broadcasting group would pay between 0.7% and 0.8% of their relevant turnover on access services, three groups would pay between 0.8% and 0.9%, and three broadcasting groups would be exempted from access services requirements on the grounds of affordability;
- c) in 2020, we estimate that two groups would pay between 0.5% and 0.7%, two groups between 0.9% and 1%; and three 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 all four remaining groups would pay between 0.5% and 0.8%, while a total of 3 broadcasting groups would be exempted from access services obligations on grounds of affordability.

Figure 4: Impact on total access services costs for broadcasters of sign-presentation



A5.26 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. 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 23 of the 39 non-domestic channels would be exempted from access services by 2023.

A5.27 Finally, although we consider that the difference in labour costs offers 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 under or over-estimation of the costs of sign presentation. Figure 5 below shows that an upward adjustment of the estimated cost of sign presentation by 10% or 20% does not result in a lower number of channels being required to provide access services by 2023, although the estimated overall cost of providing access services would rise. Conversely, if our current estimation of the cost of providing sign presentation is an overestimation, the number of channels required to provide access services would be higher.

Figure 5: 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%	£160,109	£180,122	£200,136	£220,150	£240,163
France	55.00%	£137,454	£154,636	£171,818	£189,000	£206,182
Hungary	-67.14%	£29,136	£32,778	£36,420	£40,062	£43,704
Italy	26.85%	£112,490	£126,551	£140,612	£154,673	£168,734
Netherlands	52.58%	£135,306	£152,219	£169,132	£186,045	£202,958
Poland	-62.44%	£33,310	£37,473	£41,637	£45,801	£49,964
Sweden	67.55%	£148,582	£167,154	£185,727	£204,300	£222,872
Number of channels required to provide access services in 2023		21	17	16	16	16
Number of countries served by qualifying channels in 2023		5	5	5	5	5
Average proportion of relevant turnover spent on access services in 2023		0.79% ⁷³	0.66%	0.69%	0.74%	0.79%

Scenario 2: sign-interpretation

A5.28 In this scenario, we estimate the impact on non-domestic channels if they 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 Figure 6 below. This will be a substitute requirement in lieu of the proposed requirements set under section 303(10)(c) of the Act. In 2018 all these channels would be required to provide signing on 3% of their programming, and would reach the maximum target of 5% in 2023.

⁷³ The average proportion of relevant turnover spent on access services is higher in a scenario where the actual cost of sign presentation is 20% lower than our central estimate. This is because of the relatively high costs of access services incurred by the channels which qualify under this scenario, but would be excluded under our central estimate due to the 1% expenditure cap.

Figure 6 – Signing targets expressed as percentage of total programming

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

A5.29 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.

A5.30 In the absence of actual cost data on providing sign information in other EU member states, we have followed a similar approach to that for scenario 1: in other words, 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 service⁷⁴. For the UK, the most up-to-date data we have (2013) suggests the direct costs of providing sign interpretation in the UK was slightly less than £450 per hour, which is approximately £455 when indexed for inflation. The estimated costs of providing sign interpretation are shown in Figure 7 below.

Figure 7 – Estimated costs of sign interpretation in different EU Member States

Country	Percentage variation in labour costs	Estimated cost of sign interpretation (£/hr)
UK	-	£455 ⁷⁵
Denmark	+80.55%	£822
France	+55.00%	£706
Hungary	-67.14%	£150
Italy	+26.85%	£578
Netherlands	+52.58%	£695
Poland	-62.44%	£171
Sweden	+67.55%	£763

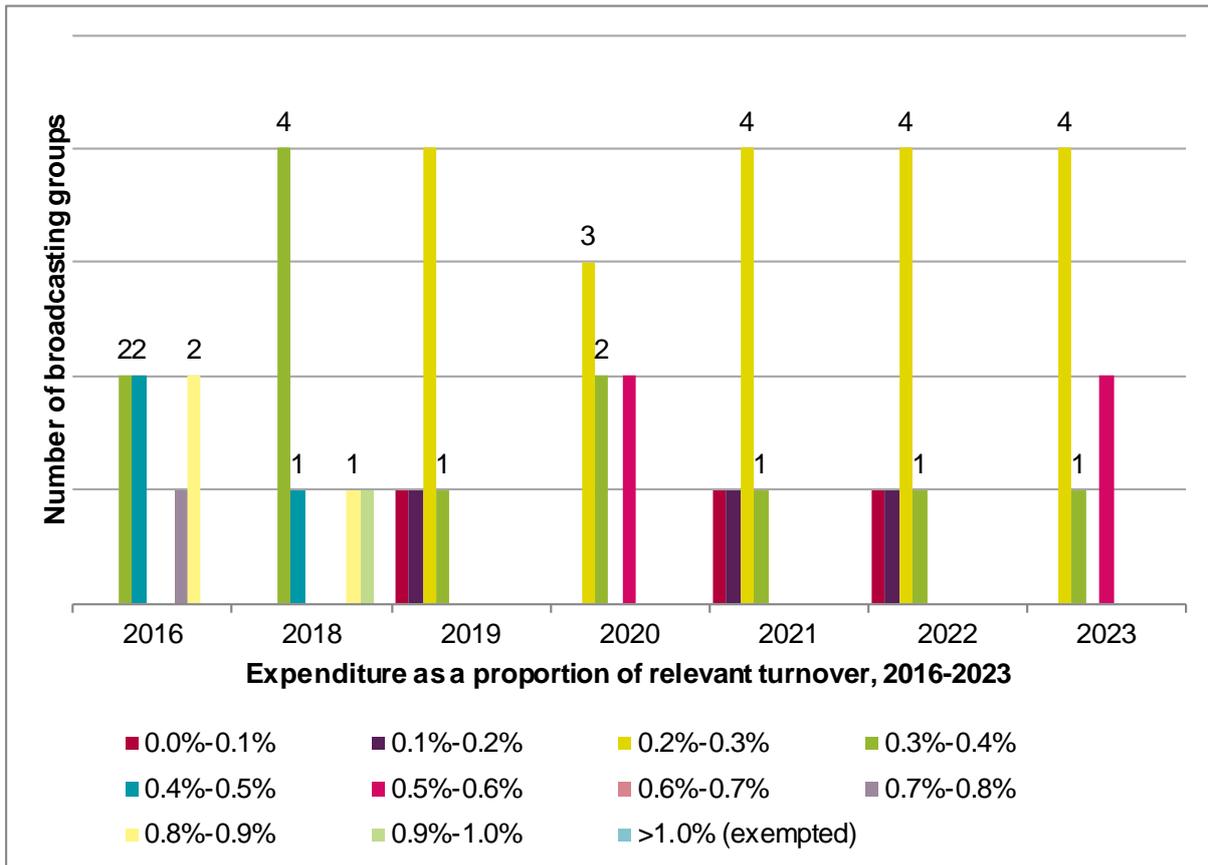
⁷⁵ Source: broadcasters of domestic channels required to provide access services, 2013 (2014 money)

⁷⁵ Source: broadcasters of domestic channels required to provide access services, 2013 (2014 money)

A5.31 As noted in paragraph A5.25, for reasons of commercial confidentiality, we do not consider it appropriate to publish the estimated cost for each channel or broadcasting group. Instead, Figure 8 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 2018 the first year these channels would be providing sign interpretation, we estimate that five broadcasting groups would pay between 0.3% and 0.5% of their relevant turnover on access services, and two group between 0.8% and 1%;
- c) in 2020 we estimate that five groups would pay between 0.2% and 0.4%, and two groups would pay between 0.5% and 0.6%.
- 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%.

Figure 8: Impact on total access services costs for broadcasters of sign-interpretation



A5.32 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.

A5.33 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.

A5.34 Finally, although we consider that the costs shown in Figure 7 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 9 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 9: Effects of higher or lower than estimated costs of sign interpretation

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 in 2023		8	8	8	8	8
% of relevant turnover spent on access services in 2023		0.35%	0.36%	0.36%	0.36%	0.37%

Scenario 3: Extra subtitling

A5.35 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 they 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 Figure 10 below. This would be a substitute requirement in lieu of the proposed requirements set under section 303(10)(c) of the Act. Under this scenario, in 2018 all these channels would be required to provide signing on 7.5% of their programming, and would reach the maximum target of 12.5% in 2023.

Figure 10 – Extra-subtitling targets expressed as percentage of total programming

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

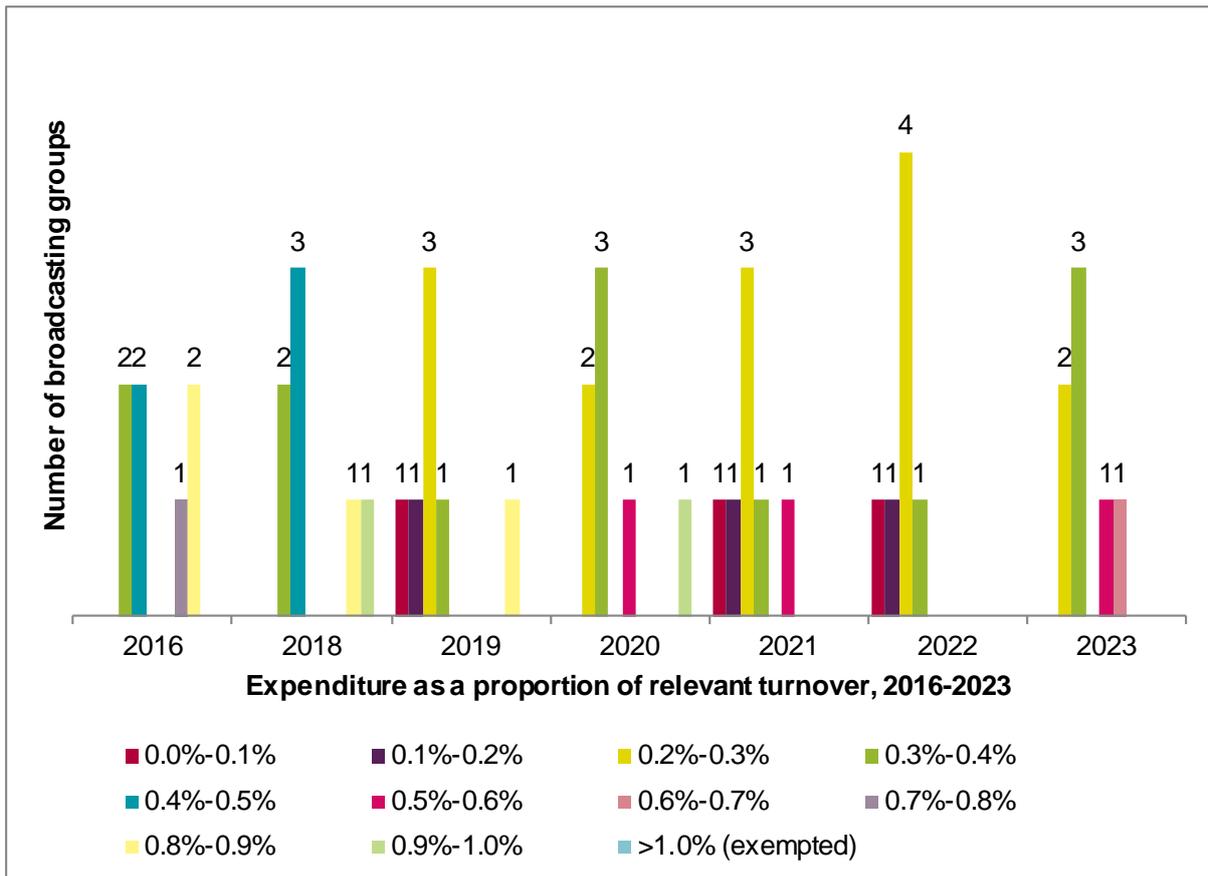
A5.36 In 2015 we collected data on the unit cost of providing subtitling and audio description in Member States served by channels required to provide access services by Ofcom. Ofcom also routinely collects data on total broadcast hours and first run hours, which are used by Ofcom to estimate the number 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 A5.15(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.

A5.37 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.

A5.38 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 11 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 2018, the first year these channels would be contributing extra subtitling, we estimate that five broadcasting groups would pay between 0.3% and 0.54% and two groups between 0.8% and 1%;
- c) in 20120 we estimate that six groups would pay between 0.2 and 0.6%, and one group would pay between 0.9% 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 11: Impact on total access services costs for broadcasters of extra subtitling



A5.39 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.

A5.40 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.

A5.41 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 12. Figure 12 does not show the adjusted cost of subtitling for each country 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.

A5.42 Figure 12 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 12: Effects of higher or lower than estimated costs of subtitling

	Effects of higher than estimated costs				
	-20%	-10%	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 in 2023	8	8	8	8	8
% of relevant turnover spent on access services in 2023	0.38%	0.42%	0.46%	0.51%	0.54%

Scenario 4: Minimum contributions to alternative arrangements

A5.43 In this section, we estimate the financial impact on broadcasters if all relevant non-domestic channels meet their obligations by contributing to alternative arrangements.

A5.44 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 or 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.

A5.45 As explained in paragraphs 1.11 to 1.12, Ofcom has decided that qualifying non-domestic channels should be able to propose alternative arrangements for whichever signing requirements they are subject to, if they wish to. Broadcasters will not be compelled to contribute to alternative arrangements; but if they choose to do so, Ofcom will consider their contributions as fulfilling the signing requirements imposed on the relevant channels, as long as:

- a) the alternative signing arrangements are consistent with Ofcom's Guidance at Annex 3 of the Code on Television Access Services; and
- b) Ofcom has approved such arrangements.

- A5.46 The level of contributions to alternative arrangements will be the same as for domestic channels.
- A5.47 Figure 13 below shows the contribution levels used for this impact assessment, expressed in 2014 money. In 2018 when these requirements would start to apply, the contribution levels will be adjusted to reflect inflation in 2016 (the latest available calendar year data available at the time of the mid-year review in June 2017).

Figure 13 - Minimum annual contributions to approved alternatives

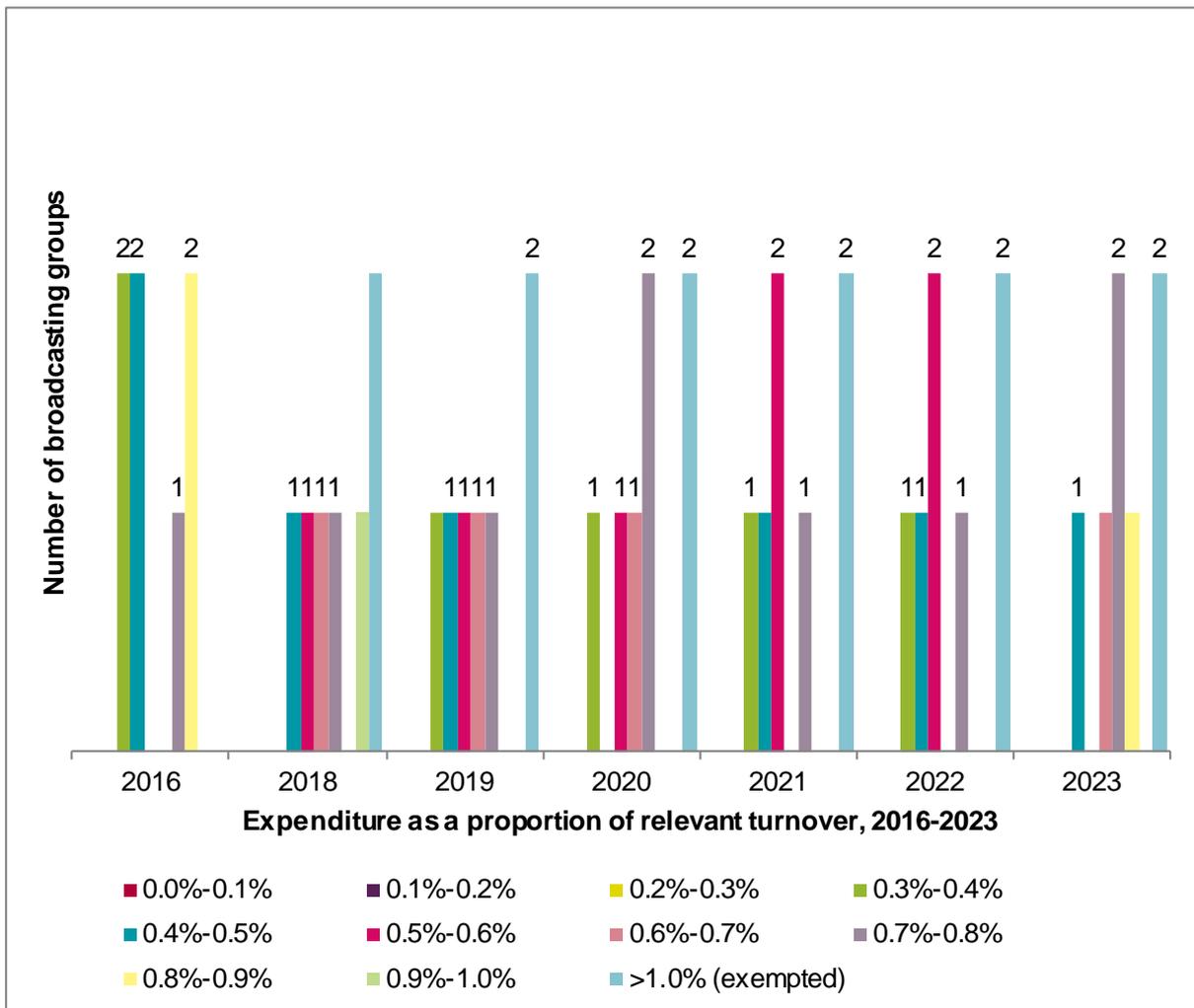
Anniversary of Notice Date	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th	8 th	9 th	10 th
Minimum annual contributions	£24.5k	£24.5k	£24.5k	£24.5k	£36.8k	£36.8k	£49.1k	£49.1k	£49.1k	£61.4k

A5.48 The notice date for all the non-domestic channels required to provide access services in 2016 is 1 January 2013. In 2018 these channels would each be required to pay a minimum contribution of £36,800 (in 2014 money), and would reach the maximum contribution level of £61,400 (2014 money) in 2023.

A5.49 To protect the commercial confidentiality of the revenues and access service costs of individual broadcasters, we do not consider that it would be appropriate to publish the results for each channel or broadcasting group. Instead, Figure 14 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 2018 the first year these channels would be contributing towards alternative arrangements, we estimate that one broadcasting groups would pay between 0.4% and 0.5% of their relevant turnover on access services, and four groups would pay between 0.5% and 1%, with two groups exempted from access services obligations on the grounds of cost;
- c) in 2020 we estimate that one group will pay between 0.3 and 0.4%, while four groups will pay between 0.5% and 0.8%, and two 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 two broadcasting groups will be exempted from access services obligations on the grounds of cost.

Figure 14: Impact on total access services costs for broadcasters of contributions to alternative arrangements



A5.50 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.

A5.51 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

A5.52 Figure 15 below summarises the impact of our proposals under the four scenarios discussed in this Annex.

Figure 15 – 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 (central estimate)			
Sign Presentation	Sign Interpretation	Extra Subtitling	Contributions to alternative arrangements
0.69%	0.36%	0.46%	0.68%

A5.53 It should be noted that all four scenarios assume that all relevant non-domestic channels are subject to the same signing requirements. Indeed, following the implementation of our decision we would expect that:

- a) different signing requirements will 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 will 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) as access service obligations increase, broadcasters might 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

A5.54 In the main document, we set out Ofcom’s decision to require non-domestic broadcasters that target EEA EFTA countries to provide access services starting from 1 January 2018.

A5.55 As with non-domestic channels broadcast to EU countries, Ofcom will assess their eligibility to provide access services on the basis of audience share and affordability criteria.

Audience share and signing thresholds

A5.56 Our 2012 consultation⁷⁶ 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 will be as set out in Figure 16:

Figure 16: 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

A5.57 There are no Ofcom-licensed channels that specifically target Iceland and Liechtenstein. 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.

A5.58 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). The rest of this section deals with our assessment of the impact of our decisions 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

2015 Consultation approach

A5.59 We do not have data on access service costs in Norway. In the 2015 consultation, in order to estimate the cost of providing subtitling and audio description services in Norway, we took the average of the corresponding costs for subtitling and audio description in Sweden and Denmark. We considered this approach was reasonable because:

- a) each of the channels available in Norway is operated by a broadcaster that also transmits channels in Sweden and Denmark; and

⁷⁶ Paragraphs 3.4 and 3.5, 2012 Consultation

(<http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/summary/condoc.pdf>)

- 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.

A5.60 In the 2015 consultation, in relation to signing costs (for both sign interpretation and sign-presentation), we derived these using the approach set out at paragraphs A5.20 to A5.24 and A5.31. Thus, we applied the percentage difference in the labour cost between the UK and Norway to the cost of signing in the UK in order to estimate the cost of signing in Norway. We estimated that the hourly cost of providing sign interpretation in the UK is £455 and the annual cost of sign presentation in the UK is £73,900⁷⁷. We estimated that labour costs are 141% higher in Norway compared to the UK.⁷⁸ We have adjusted the UK costs using the labour cost differential to estimate the costs of providing signing in Norway.

Stakeholder comment

A5.61 In its response to the consultation, MTG said that ‘it should not be assumed that [the costs for subtitling and audio description in Norway] correspond to the costs of subtitling and audio description in Sweden and Denmark’. MTG pointed to the significant disparity in average hourly labour costs, which averaged €54 in Norway, as against €37.4 in Sweden and €40.3 in Denmark.

Ofcom response

A5.62 We recognise that the differences in labour costs among Scandinavian countries are significant. We have therefore updated our estimation of the costs associated with the subtitling and audio description in Norway to reflect the difference in the average labour cost between the UK and Norway.

A5.63 We estimate that the hourly cost of providing audio description and subtitling in the UK are £~~3~~ and £~~3~~ respectively⁷⁹. We estimate that labour costs are 141% higher in Norway compared to the UK.⁸⁰ We have adjusted the UK costs using the labour cost differential to estimate the costs of providing audio description and subtitling in Norway. We consider that this updated methodology more accurately estimates the likely cost of providing access services on non-domestic channels made available in Norway.

⁷⁷ 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 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>)

⁷⁸ source: Eurostat, *Labour costs annual data* (<http://ec.europa.eu/eurostat/web/labour-market/labour-costs/main-tables#>), retrieved 7 March 2016.

⁷⁹ Source: Broadcasters, 2014. Redacted for reasons of commercial confidentiality.

⁸⁰ source: Eurostat, *Labour costs annual data* (<http://ec.europa.eu/eurostat/web/labour-market/labour-costs/main-tables#>), retrieved 7 March 2016.

Estimated financial impact

A5.64 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.

A5.65 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 5th anniversary of their notice date by 1 January 2018;
- 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.

A5.66 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 from 2018 to 2023 (i.e. the year when the signing obligations reach their highest level for the qualifying channels);
- b) assuming all channels were subject to substitute requirements which meant that they could meet their signing obligations by showing sign-interpretation, two of the eight channels meeting the audience share threshold would be required to provide access services from 2018 to 2023 (when the maximum quotas would apply), while six channels 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, three channels would be required to provide access services between 2018 and 2023, while 5 would be exempted on the grounds that their costs exceed 1% of their relevant turnover;
- d) finally, assuming all channels met their signing requirements by contributing to alternative arrangements, two channels would be required to provide access services between 2018 and 2023, while six channels would be exempted on the grounds of affordability.

A5.67 As noted at paragraph 3.30, following the implementation of Ofcom's decision, we will periodically gather actual cost data to identify the list of channels required to provide access services.

Proposed review

A5.68 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.