
How should On-demand Programme Services be made accessible?

Consultation to inform regulations

CONSULTATION:

Publication Date: 19 December 2017

Closing Date for Responses: 3 April 2018

About this document

This document seeks input in relation to improving the accessibility of regulated video on-demand programme services (“ODPS”) to those with hearing and/or visual impairments. In line with the Digital Economy Act 2017, responses to this consultation will help to inform Government drafting of regulations in this area.

Contents

Section

1. Summary	1
2. Background	3
3. Issues for consideration and call for inputs	7

Annex

A1. Extracts from Digital Economy Act 2017	19
A2. Extracts from Communications Act 2003	22
A3. Responding to this consultation	25
A4. Ofcom's consultation principles	28
A5. Consultation coversheet	29
A6. Consultation questions	30

1. Summary

Why is this consultation needed?

- 1.1 Recent years have seen a huge shift in our television viewing habits, with the introduction of catch-up television services and on-demand subscription services (like Amazon Prime and Now TV). According to Ofcom research¹, 63% of UK adults now use iPlayer, and 31% subscribe to Netflix.
- 1.2 But while these services offer more choice than ever, some of us are missing out. For those with hearing and/or sight impairments, access to (and enjoyment of) television can depend entirely on subtitles, signing or audio description (collectively known as ‘access services’).
- 1.3 Traditional broadcast television channels are obliged by law to make a certain proportion of their programmes accessible. This year 85 channels were required to provide access services, accounting for over 90% of television viewing in the UK.
- 1.4 The picture for catch-up and on-demand services is very different. There is no legal requirement to provide access services, and our latest information shows that 62% of on-demand providers don’t offer any². Those who are dependent on these features are effectively excluded from participation.
- 1.5 This is why the Digital Economy Act 2017 paves the way for requirements that on-demand services are made accessible. As outlined in paragraph **Error! Reference source not found.** below, Ofcom is required to undertake this consultation in order to make recommendations to Government in advance of regulations being drafted.

What will this consultation achieve?

- 1.6 Our aim is for this consultation to inform regulations which are effective, proportionate, flexible and fit to apply to a diverse and developing video on-demand industry.
- 1.7 With this in mind, we have identified a number of key issues, on which we are asking for input. We ask what kind of intervention would be required, which services should be subject to what type of requirement, and how requirements should be introduced.
- 1.8 We ask that respondents provide as much information as possible to support their views, so that our recommendations to Government are well informed and reflect the realities of both the video on-demand industry and the consumers who would be served by greater accessibility.

¹ Ofcom’s Communications Market Report 2017. See the [television](#) and [online](#) sections

² Read the latest report [here](#)

What happens next?

- 1.9 We would welcome input on these issues by **5pm on Tuesday 3 April 2018**. Ofcom will consider the responses and provide recommendations to Government. Ofcom will at this time also publish a public statement outlining its recommendations to Government.
- 1.10 Government will then consider Ofcom's recommendations. Following the introduction of any such regulations, Ofcom would expect to consult on a code giving guidance on compliance with the regulations.

Publication in alternative formats

- 1.11 We will consider all reasonable requests for publication of this consultation document in alternative formats or other languages. If you would like to make a request, you can call our Advisory Team from Monday to Friday between 09:00 and 17:00 on 020 7981 3040 or 0300 123 3333. If you are deaf or speech-impaired, you can use our textphone numbers, which are 020 7981 3043 or 0300 123 2024.

2. Background

What's the current situation?

- 2.1 Ofcom regulates on-demand programme services (“ODPS”) under the Communications Act 2003 (as amended) (“the Act”). ODPS regulated by Ofcom include a wide range of services, such as public service broadcasters’ catch-up services (like ITV Hub), film services (like Amazon Video), local TV archives and “adult” websites. Whether an on-demand service is regulated by Ofcom depends on a number of factors including whether it includes ‘television-like’ content and whether it is within UK jurisdiction³ (Netflix, for example, is not currently within jurisdiction)⁴.
- 2.2 The statutory rules applying to on-demand services are different to those applying to conventional broadcast television services. One way in which they differ is in the requirement to make these services accessible to those with hearing and/or sight impairment. Broadcast television services are required by law to make a certain proportion of their programming accessible⁵, by means of subtitles, signing, and audio description (collectively known as ‘access services’). See Annex 2 of this document for relevant extracts from the Act. However there are not currently equivalent statutory requirements in relation to ODPS although Ofcom does have a duty under section 368C(2) of the Act to “encourage” providers of ODPS to ensure that their services are progressively made more accessible.⁶
- 2.3 Since the requirements for broadcast television services were introduced in 2004, there has been very significant improvement in accessibility (see Figure 1). This year (2017) 85 UK channels were required to provide access services, accounting for over 90% of broadcast television viewing in the UK. By way of contrast, the accessibility of ODPS lags behind (see Figure 2), with patchy provision of access services depending on the platform via which the service is viewed. For more information, see this year’s report on ODPS accessibility⁷ which has been published alongside this consultation document.

³ See Ofcom’s [Guidance notes on who needs to notify](#)

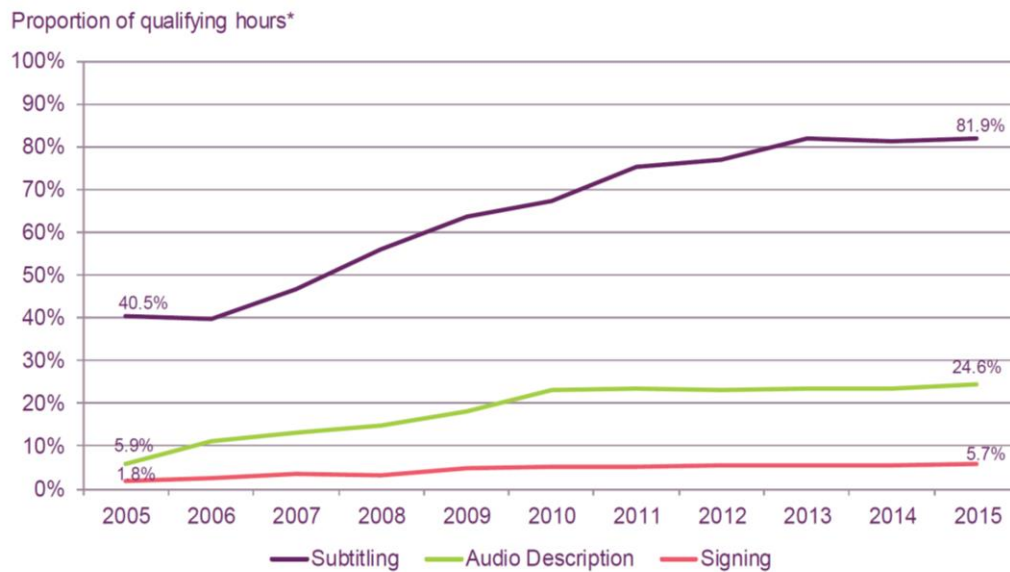
⁴ A list of ODPS currently notified to Ofcom can be found [here](#)

⁵ [Code on Television Access Services](#)

⁶ Ofcom has further duties under the Digital Economy Act 2017 to draft a code giving guidance on the relevant regulations when they come into force (see paragraph 2.9 of this document).

⁷ Available [here](#)

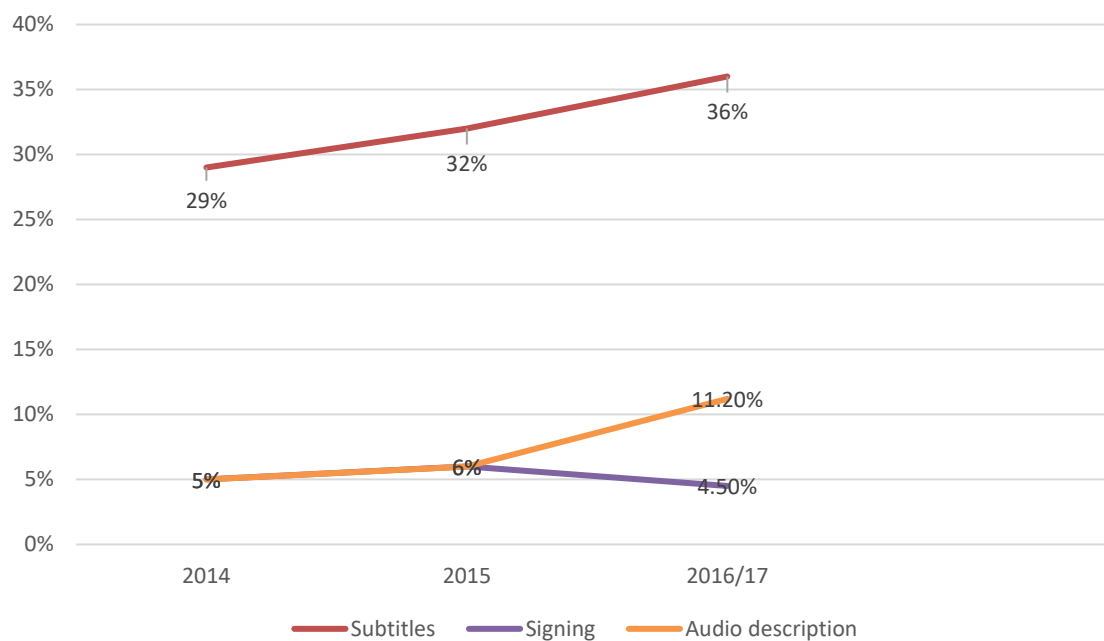
Figure 1: Progress in broadcast accessibility 2005-2015



Source: Ofcom / Broadcaster returns

*Qualifying hours include all hours required by Ofcom under the [Code on Television Access Services](#)

Figure 2: Progress in on-demand accessibility – proportion of providers offering access services



- 2.4 This lack of consistent progress means that disabled consumers are being left behind as catch-up and on-demand services become increasingly popular⁸. A 2017 study⁹ by the Communications Consumer Panel found that on-demand programmes have much lower usage among those with hearing and visual impairments than in the general UK population, and attributes this to significant issues around availability and awareness of access services.
- 2.5 Ofcom strongly believes that consumers with hearing and/or visual impairments should have access to television, whether it is broadcast or on-demand. To date we have worked in a number of ways to encourage more widespread availability of access services on ODPS. Last year we published a statement on how we are changing our approach to collecting data about on-demand accessibility¹⁰. However we have also suggested that we may need greater statutory powers in order to ensure increased accessibility of these services.

The Digital Economy Act

- 2.6 The Digital Economy Act 2017¹¹ (“DEA”) further amends the Act, stating that the Secretary of State may by regulations impose requirements on providers of ODPS for the purpose of ensuring that their services are accessible to people with disabilities affecting their sight and/or hearing. The requirements that may be imposed include requirements for programmes in ODPS to be accompanied by subtitles/signing/audio description. Such services, which facilitate greater access for those with disabilities, are collectively known as ‘access services’. See Annex 1 for the relevant excerpts from the DEA.
- 2.7 The DEA requires the Secretary of State to ask Ofcom to consult stakeholders likely to be affected by regulations on ODPS accessibility before she makes any regulations in this area. The Secretary of State has asked Ofcom to do this and this document constitutes such a consultation.
- 2.8 We believe that the stakeholders most likely to be affected by such regulations include those with disabilities affecting their sight and/or hearing, as well as the providers of ODPS who are likely to be subject to any new requirements that are imposed. This is an open consultation to ensure that all those likely to be affected, or with an interest in this area, have the opportunity to respond and help shape Ofcom’s recommendations to Government.
- 2.9 The DEA also states that, following such regulations coming into force, Ofcom should draw up a code giving guidance to ODPS providers on meeting the requirements and on other steps to be taken to ensure that their services are made progressively more accessible to people with disabilities affecting their sight and/or hearing.

⁸ See Ofcom’s [Communications Market Report 2017](#)

⁹ Research by the Communications Consumer Panel: [Access to broadcast and on-demand content: Time to catch up!](#)

¹⁰ The statement is available [here](#)

¹¹ [Digital Economy Act](#)

What happens next?

- 2.10 Ofcom will consider the responses it receives to this consultation and provide recommendations to Government taking those responses into account. Ofcom will at this time also publish a public statement detailing its recommendations to Government.
- 2.11 Government will then consider Ofcom's recommendations. Following the introduction of any such regulations, Ofcom would expect to consult on a new code on ODPS access services, as required under the Act, giving guidance on compliance with the regulations.

3. Issues for consideration and call for inputs

- 3.1 Our aim with this consultation is to inform Government's drafting of regulations which ensure measurable progress in the accessibility of ODPS, whilst being flexible enough to apply to a diverse and developing on-demand industry. We aim for our recommendations to ensure that regulations are effective, proportionate, targeted, and future-proof.
- 3.2 We will also consider in our recommendations what should be laid out in regulations and what should be laid out as guidance by Ofcom in the associated code.
- 3.3 We draw attention to the fact that the regulations would impose requirements only on providers of ODPS (not, for example, the operators of platforms on which those ODPS appear, or the manufacturers of equipment used to access ODPS).
- 3.4 In this section we invite respondents to comment on key issues we have identified as being significant. We also invite respondents to offer views on any other issues they feel are likely to be pertinent to the drafting of regulations. We ask respondents to provide evidence supporting their comments, for example in relation to the impact (or otherwise) of providing access services on different content.
- 3.5 In considering the responses and making recommendations to government, we aim to ensure that our approach reflects Ofcom's regulatory principles which state that interventions should be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome. With this in mind we note the following:
 - a) We assume, in line with the Digital Economy Act provisions, that there is clear and significant value in increasing the accessibility of ODPS to those people with sight and/or hearing impairments
 - b) We will further assess the specific audience benefits of any particular intervention, looking at the priorities and preferences of the relevant consumers.
 - c) We will also look at the impact to stakeholders of any particular intervention, particularly in terms of
 - i) Cost; and
 - ii) Technical or operational difficulty
 - d) In considering the benefits and costs of specific interventions, we will also look at the likely effectiveness of any particular intervention.

What kind of intervention?

- 3.6 As we outlined in 2.3 and Figure 1 above, the broadcast requirements appear to have been a successful intervention, leading to increased accessibility of broadcast television services. We consider below how the broadcast regulations have worked, and whether we can learn from them in considering ODPS accessibility.

- 3.7 The Act lays out five and ten year targets for the percentage of broadcast programming which should appear with subtitles, signing, and audio description. The Act requires Ofcom to draw up a code (the 'TV Code'¹²) which amongst other things must require that these five and ten year targets are fulfilled. The Code is also required to describe the programmes/services Ofcom considers should be excluded from the requirements, having regard to certain factors such as audience benefit, technical difficulty and cost.
- 3.8 Our experience with broadcast accessibility suggests that the following are key issues for consideration in this consultation:
- a) **What** features would ensure accessibility?
 - b) **Which** services/content should be subject to access service requirements, and should some services be excluded (and if so on what grounds)?
 - c) **How** and **when** should these requirements be introduced?
- 3.9 We acknowledge that these questions cannot be considered in isolation – for instance, the question of which services should be subject to requirements will depend on what those requirements are and how they are introduced.

Q1 Do you agree with our assessment of the key issues involved to inform regulations in this area?

What features would ensure accessibility?

Access Services

- 3.10 The DEA specifies that requirements may include requirements for programmes included in ODPS to be:
- a) accompanied by subtitling;
 - b) accompanied by audio-description for the blind;
 - c) presented in, or translated into, sign language.
- 3.11 Subtitling, audio-description and signing are similarly specified in relation to broadcast accessibility in the Act and the TV Code. These services are collectively known as 'access services' and are generally regarded as a key means by which audiovisual content can be made accessible to those with disabilities relating to sight and/or hearing.

¹² [Code on television access services](#)

Q2 Are there other ‘access services’ which you believe should be specified in any regulations?

Q3 Do you have views on the relative importance of sign-presented programming and sign-interpreted programming?

Usability features

- 3.12 Access services such as subtitling and audio description are of limited benefit if they cannot be found and used by the relevant consumers. Therefore, another way in which ODPS might be made more accessible is by addressing the “usability” of such services by those people with sight and/or hearing impairment.
- 3.13 In relation to broadcast television, certain usability features are currently required or recommended, as follows:
- a) The TV Code includes provision for securing that relevant broadcasters ensure that adequate information about the access services on offer is made available to those who are likely to want to make use of it.
 - b) Ofcom’s Code on Electronic Programme Guides¹³ sets out separately the practices to be followed by EPG providers to enable people with sight and/or hearing impairments to use those EPGs to access broadcast services. We are currently consulting on revisions to the EPG Code¹⁴ to introduce wider use of specific accessibility features such as text-to-speech functionality (“speaking EPGs”); text magnification; high contrast display options; and filtering of programmes by availability of audio description/signing.
 - c) The TV Code requires broadcasters to observe the best practice standards set out in its ‘Guidelines on the provision of television access services’ (which currently appears as an Annex to the TV Code). These guidelines cover issues such as the selection and scheduling of accessible programming, and priorities and standards for access service creation and presentation (for example recommended subtitling fonts and best practice on signaling selection of access services in a manner appropriate to the relevant consumers).
- 3.14 On-demand programme services are partly defined by the way in which programmes are selected and accessed – such services ‘enable users to view, at a time chosen by the user, programmes selected by the user from the programmes included in the service’¹⁵. We acknowledge that there can be a number of different parties involved in making such services usable (for example in some circumstances this may include the provider of an Electronic Programme Guide through which the ODPS is made available e.g. YouView’s ‘backwards’ EPG). However we note that in all cases the ODPS provider will, by definition, have ‘editorial control’ over the programmes in that service, defined within the Act as

¹³ [Code on Electronic Programme Guides](#)

¹⁴ Read the consultation [here](#)

¹⁵ See Ofcom’s [Guidance on who needs to notify](#) an on-demand programme service

general control over the selection and organisation of the programmes which comprise that service. This would typically include some control over the metadata provided with any given programme, which can be used to enable various usability features. In cases where the ODPS is made available on an own-brand website or app, the ODPS provider's control over the user interface can be more direct.

3.15 We invite views on the extent to which regulations can or should include requirements in relation to the following usability features, or whether they are best addressed in Ofcom's associated code of guidance.

- a) The provision of information on accessibility to consumers, for example indicating the availability of access services for any given programme;
- b) The accessibility of ODPS catalogues (used to navigate to content), for example 'talking catalogue' features for those with sight impairment;
- c) Best practice relating to the creation, selection, scheduling and presentation of accessible programming.

Q4 To what extent can or should regulations require usability features including (but not necessarily limited to): provision of information; accessible catalogues; and best practice relating to the creation, selection, scheduling and presentation of accessible programming? If you do not believe that these features should be required by the regulations, should the regulations require Ofcom's resulting code to give guidance on these issues?

Which services should be subject to requirements?

3.16 In this section we consider whether regulations should be confined to particular types of on-demand services/content, and whether some on-demand services/content should be subject to reduced requirements or excluded from requirements altogether.

3.17 We believe that it is first necessary to consider the following question: on what basis should regulations treat some services differently? We suggest that there are three core grounds on which services can be differentiated for these purposes:

- a) audience benefit (to what extent would an increase in accessibility features on this service/content have a positive impact for consumers?)
- b) cost / affordability (would the associated financial burden on the ODPS provider be proportionate?)
- c) practicability (are there technical/operational difficulties in implementing the requirements on this service / content?)

3.18 In identifying these grounds, we have taken into account responses to this year's collection of data on ODPS accessibility, in which respondents were asked to comment on any

barriers they had identified to the provision of access services on ODPS (technical, legal, financial or other)¹⁶.

Q5 Do you agree that audience benefit, cost, and practicability are appropriate grounds for differentiating services/content for the purposes of regulations? Are there other grounds on which you believe ODPS programmes/services should be differentiated (prioritised, excluded, or subject to different requirements)?

- 3.19 Below we consider each of these grounds in turn and ask which types of service/content should be included or excluded from requirements on these grounds. We also ask if excluded services/content should be subject to reduced or altered requirements. A similar situation exists in relation to broadcast accessibility, where, for example, broadcast channels with smaller audience shares have amended obligations, and can propose 'alternative arrangements' (see 3.51 to 3.53 below).

Audience Benefit

- 3.20 In this section we look at how regulations might differentiate between services depending on the potential audience benefits. We look first at specific characteristics which may confer particular benefit, and then more generally at audience benefit related to the likely size of the audience.

Public Service Broadcasters

- 3.21 Despite changes to the way people watch television, public service broadcasters (such as the BBC and Channel 4) remain at the heart of the UK's television viewing experience¹⁷. Such services arguably have a special role to play in modelling best practice when it comes to providing accessible content to all viewers.
- 3.22 Channel 3 (ITV and STV) and Channel 4 (but not currently Channel 5) are required under the Act to meet stricter broadcast accessibility requirements than other broadcasters. The BBC's obligations are set out separately in the BBC Charter and Agreement.
- 3.23 Where public service broadcasters offer 'catch-up' services, or indeed VoD-only services, we can see an argument that these services should similarly be subject to enhanced requirements. Any role in modelling best practice remains relevant, as does the central place of public service 'catch-up' content in the on-demand viewing experience¹⁸. However, we also recognise that there are other on-demand services with equivalent (if not greater) popularity and influence, such as the major subscription film/television services.
- 3.24 We welcome views on whether ODPS provided by the public service broadcasters should be subject to more stringent requirements than ODPS provided by others.

¹⁶ See Annex 3 of [this year's report](#)

¹⁷ See Ofcom's [PSB Annual Research Report 2017](#)

¹⁸ See the [television and audio-visual](#) section of Ofcom's 2017 Communications Market Report, in particular the relative popularity of such catch-up services in Figure 2.2.

Q6 Should the regulations impose more stringent requirements on public services broadcasters' ODPS than on ODPS provided by others?

Content which has previously been broadcast with access services

- 3.25 The discrepancy between the accessibility of programmes broadcast on television and the comparative lack of accessibility for the same programmes when made available on catch-up services disadvantages consumers with sight/hearing disabilities and is likely to cause confusion and frustration. A consumer who relies on subtitles, for example, can watch one episode of a series with subtitles when it is broadcast, but then be unable to watch subsequent episodes on catch-up services.
- 3.26 The majority of programmes included in 'catch-up' services will have already been made accessible for consumers with sight/hearing disabilities as a result of the broadcast requirements. Therefore, access services such as subtitling will have already been created for this content, although some repurposing will still be required for use on ODPS. This process involves changes to workflow, manual interventions (for example to remove advertising breaks), and changes to automated systems to convert access services for use on different platforms¹⁹, all of which have associated costs.
- 3.27 However, we also point to the increasing popularity of 'VoD-only' services such as Amazon Prime Video²⁰. Often these services are offered on a subscription basis (for example Sky's Now TV). Some VoD-only content (for example BBC3 content) has been provided first 'on-demand' and subsequently broadcast. Any regulations limited to catch-up content of the sort described above would miss a significant, and growing, part of the VoD market.

Q7 Should the regulations limit accessibility requirements to programmes/services which have previously been broadcast with access services, or impose more stringent requirements on these programmes/services?

Size of audience

- 3.28 The audience size for a particular service or programme is one obvious way in which the benefits of increased accessibility can be measured. If the audience is very small then there are fewer people to benefit from increased accessibility.
- 3.29 In considering the size of ODPS audiences, it is Ofcom's understanding that there is currently no robust, independent industry-standard measurement for on-demand audience figures. For UK broadcast services, audience share data is obtained through the Broadcasters' Audience Research Board (BARB)²¹. BARB does provide measures for catch-

¹⁹ See the [first report](#) from previous regulator ATVOD's technical working group on access services:

²⁰ See the [television and audio-visual](#) section of Ofcom's 2017 Communications Market Report, figure 2.3.

²¹ Under the TV Code, audience benefit is assessed using the viewing share of a given service, measured as an average share of all households over a 12 month period. UK broadcast services which have less than a 0.05%

up television viewing, and its ‘Project Dovetail’²² aims to provide data on online and on-demand viewing, but this does not yet comprise a comprehensive industry measure.

- 3.30 It may be that we need to consider proxies for audience share such as the size of the content catalogue on offer, or the absolute numbers of viewers as measured individually by ODPS providers (although there may be confidentiality issues associated with these figures)
- 3.31 Any measure of audience size on ODPS would need to take into account the fact that ODPS are generally watched on a variety of platforms. For example, a public service catch-up service like All4 can appear as a stand-alone website, an app on a mobile platform or connected TV, or a player made available via a third party service such as Sky or Virgin. The audience size may be very different on different platforms. One approach would be to restrict accessibility requirements to the most popular platforms in order to maximise the impact for consumers. We acknowledge that such an approach would require a method to determine the platforms to be prioritised, and that those platforms would be likely to change over time.
- 3.32 We therefore invite views on the extent to which audience size/share should be taken into account in relation to ODPS, and how.

Q8 Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of audience size? If so, should there be different requirements for excluded programmes/services?

Q9 Should the regulations impose different accessibility requirements on ODPS made available via certain platforms, and if so which?

Q10 Do you have any views or information on appropriate and available means of measuring the audience impact of ODPS?

Particular genres

- 3.33 In addition to audience numbers/share, we invite views on whether there are particular types/genres of programming which should be excluded from requirements on the grounds of limited audience benefit. An example of this would be ‘adult’ services (pornographic services “whose primary purpose is sexual arousal or stimulation”²³). Providers of such services are currently not obliged to submit data to Ofcom on the accessibility of their adult ODPS, on the grounds that Ofcom’s engagement with consumer groups and industry stakeholders has previously indicated insufficient demand for access services on these ODPS.

share of UK household viewing are excluded from having to provide access services (the threshold for sign-interpretation requirements is higher at 1%).

²² [Project dovetail](#)

²³ See the British Board of Film Classification’s guidance [here](#)

- 3.34 However, in Ofcom’s 2017 statement on accessibility of ODPS²⁴, we acknowledged that the demand for access services is hard to measure with any certainty, and that the ODPS industry is a developing one where market shares, nature of output, available measurements and consumer preferences can change, requiring periodic reassessment of whether it is appropriate for any services or types of service or content to be excluded from the routine provision of accessibility data.

Q11 Are there particular types/genres of programming which should be excluded from requirements, or subject to reduced requirements, on the grounds of limited audience benefit?

Affordability

- 3.35 One way of ensuring a proportionate regulatory approach might be to exclude services/programmes from requirements where those requirements are not affordable, or impose a disproportionate financial burden. Again, this section asks both about the principle of such an exclusion and the means by which it could operate.
- 3.36 To assess affordability requires some measure of the cost of the requirements, and a measure of the provider’s ability to pay. The TV Code, for example, obliges broadcasters to provide a given level of accessibility only if it can be achieved within 1% of their ‘relevant turnover’²⁵. In outline, ‘relevant turnover’ refers to turnover that is derived from the provision of the broadcast service in question. In order to assess affordability in relation to broadcast services, Ofcom requires information on:
- a) relevant turnover, and
 - b) the costs of providing access services.
- 3.37 We note in relation to ODPS that VOD-specific turnover can be difficult to obtain. Ofcom has acknowledged this difficulty in our approach to determining ODPS regulatory fees and uses the overall turnover of the ODPS provider instead²⁶ on the basis that this is a reasonable proxy for the ability of an ODPS provider to pay. We would welcome views on whether this approach could also provide an appropriate measure for assessing the ability to pay for ODPS access services).
- 3.38 Turning to the cost of providing access services, it is Ofcom’s understanding that there are a number of different cost categories involved, including:
- a) Initial costs of creating subtitles, signing and audio description – we assume that these are the same whether the content itself is for broadcast or on-demand distribution;
 - b) Costs of repurposing existing access services for use on ODPS;

²⁴ Available [here](#)

²⁵ As defined in [Ofcom’s Statement of Charging Principles](#), 8 February 2005

²⁶ See our [statement](#) on regulatory fees for ODPS

c) Costs of converting access services for use on a number of different platforms.

3.39 We invite comment and information on the costs outlined above, in relation to both VOD-only services (where content has not previously been broadcast) and catch-up/archive services where content has previously been broadcast. In particular we welcome views on:

a) which of these cost categories apply (for example, for 'VOD-only' services, is there scope for repurposing access services already created, e.g. for cinema or DVD release?); and

b) the likely costs involved in each case.

Q12 Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of affordability? If so, should there be different requirements for excluded programmes/services?

Q13 Do you have any views or information on appropriate and available means of quantifying: ODPS-specific revenue; and costs associated with ODPS access services?

Q14 If you are an ODPS provider, do you have information on the likely costs involved in providing access services on your ODPS?

Practicability

3.40 We acknowledge that ODPS providers are faced with technical and operational barriers to providing access services. Our most recent report on ODPS accessibility²⁷ outlines providers' comments on such barriers.

3.41 ODPS providers have told both Ofcom and previous regulator ATVOD²⁸ that a key obstacle to providing on-demand access services is the technical challenge of providing access services to a range of different platforms (e.g. YouView, Virgin, Sky), each of which may require delivery of these access services in a different technical format.

3.42 While these obstacles can be challenging, they are not generally insurmountable²⁹. A key issue in this regard is who takes responsibility (and provides resources) for ensuring that available access services reach the consumer.

3.43 While Ofcom strongly encourages platform operators to ensure that their platforms support commonly used subtitle formats, we note once more that any requirements drawn up under s93 of the DEA (s368BC of the amended Communications Act) will apply only to

²⁷ See Annex 3 of [this year's report](#)

²⁸ See the annual [VOD access services reports](#)

²⁹ See the [first](#) and [second](#) reports from ATVOD's technical working group on access services

the providers of ODPS and not to the operators of the platforms through which those ODPS are made available to consumers.

- 3.44 Following on from the ATVOD reports on technical obstacles to VOD accessibility, Ofcom has continued to work with ODPS providers and platform operators to encourage a more standardised approach to access service provision, and in particular a standard technical format for subtitles. However Ofcom does not believe it appropriate to mandate any particular technical standard or solution as this risks constraining product development and innovation.
- 3.45 It seems reasonable to suggest that providers should not be required to introduce accessibility features where it is technically impossible (or unduly difficult) for them to do so. For example, under the TV Code, audio description requirements are waived when services are broadcast in countries where standard consumer equipment does not support audio description.

Q15 Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of technical difficulty? If so, should there be different requirements for excluded programmes/services?

How and when should accessibility features be introduced?

How – quotas?

- 3.46 We said at the outset of this document that we want our recommendations to lead to regulations which are effective, resulting in measurable progress. One way of measuring progress is to set targets against which ODPS providers' progress can be assessed, for example relating to the minimum amount of programming that must be accompanied by subtitling/signing/audio description.
- 3.47 In relation to broadcast television, such targets are expressed as percentages of the service including all programmes other than advertisements and excluded programmes. These percentages are fulfilled by reference to averages computed over twelve month periods. However, while broadcast services comprise fixed schedules with a finite amount of programming, ODPS comprise catalogues of content of varying sizes (which can change over time). Therefore, the calculation of quotas in relation to ODPS would need to take this into account. ODPS providers in fact already report to Ofcom on the proportion of their content made available with access services. Ofcom's guidance is that these figures should reflect all content made available on a service over a given period (regardless of how long that content remained available to consumers). However, we invite respondents to comment on the appropriateness of quotas in relation to ODPS, and the means of calculating them.

Q16 Should regulations include quotas on percentages of programming available with access services? If so, what should the quotas be? If not, what other methods do you consider appropriate for the purpose of setting access service requirements for ODPS?

When – a phased introduction?

- 3.48 In this section we ask for views on the timeframe for the introduction of requirements (such as targets/quotas). Ofcom recognises that the process of introducing accessibility features does not happen overnight and can involve (for example) the creation of access services or contractual agreements with third party content providers to supply access service assets, and the amending of workflows to accommodate access services assets and sometimes reversion them for playout on different platforms (see ‘technical difficulty’ above). When statutory quotas for broadcast services were introduced in 2003, the obligations were phased in gradually. For example, the Act laid out five and ten year targets for subtitling, which were 60% and 80% (90% for PSBs) of non-excluded programming respectively. The Act also gave Ofcom the power to impose interim targets, which are set out in the TV Code.
- 3.49 However, Ofcom also draws attention to the fact that many broadcasters are now fulfilling the ten year targets for access services³⁰. For those ODPS providing programmes previously broadcast with access services, accessibility is not at a ‘standing start’, and any phased introduction could arguably require more rapid progress.
- 3.50 Ofcom believes that there may also be a case for prioritising implementation in particular services such as catch-up television, PSBs, and services appearing on particular platforms. The rationale for doing so mirrors that for limiting requirements to these services, as outlined above. However, we are also aware that while in practice we need to reflect current priorities, these priorities are subject to change. For example, the importance of catch-up content may conceivably dwindle as audiences become more accustomed to ‘VOD-only’ or ‘VOD-first’ programming. Regulations in this area need to be ‘future-proof’.

Q17 Do you think that there should be a phased introduction of requirements? If so, please give details.

Q18 Do you think that the introduction of requirements should prioritise particular types of ODPS programmes or services?

Alternative arrangements

- 3.51 Where a programme/service has been excluded from the full requirements, it may nonetheless be reasonable to expect a different level of accessibility to be achieved, or an alternative arrangement to be put in place.

³⁰ Approximately 73% of those channels subject to the full requirements in 2016

- 3.52 As indicated in 3.19 above, broadcast channels with smaller audience shares can either fulfill amended obligations (relating to access services quotas) or can propose and ask Ofcom to approve alternative arrangements. For example, in place of providing signed programming, many UK broadcasters have made a financial contribution to the British Sign Language Broadcasting Trust, which commissions and distributes programmes made in British Sign Language.
- 3.53 We invite views on whether there are satisfactory alternative arrangements which might apply in relation to ODPS in place of an ODPS provider making its own content available with access services.

Q19 Should ODPS providers be able to propose alternative arrangements, and if so what type of arrangements?

Anything else?

Q20 Do you have any other comments or information you wish to share in relation to the drafting of regulations on ODPS accessibility?

A1. Extracts from Digital Economy Act 2017

93 On-demand programme services: accessibility for people with disabilities

(1) The Communications Act 2003 is amended as follows.

(2) After section 368BB insert—

“Accessibility

368BC Accessibility for people with disabilities

(1) The Secretary of State may by regulations impose requirements on providers of on-demand programme services for the purpose of ensuring that their services are accessible to people with disabilities affecting their sight or hearing or both.

(2) The requirements that may be imposed include—

(a) requirements for programmes included in the services to be accompanied by subtitling;

(b) requirements for such programmes to be accompanied by audio-description for the blind;

(c) requirements for such programmes to be presented in, or translated into, sign language.

(3) The steps set out in subsections [\(4\)](#) to [\(6\)](#) must be taken before regulations are made under this section.

(4) The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including—

(a) providers of on-demand programme services, and

(b) representatives of people with disabilities affecting their sight or hearing or both.

(5) The appropriate regulatory authority must inform the Secretary of State of—

(a) the outcome of the consultation, and

(b) any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.

(6) Where OFCOM are not the appropriate regulatory authority, the Secretary of State must consult OFCOM.

(7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

[368BD Enforcement of regulations under section 368BC...]

368BD Enforcement of regulations under section 368BC

(1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened regulations under section 368BC, they may do one or both of the following—

- (a) give the provider an enforcement notification under this section;
- (b) impose a penalty on the provider in accordance with section 368J.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of the regulations is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for complying with the regulations and for remedying the consequences of the contravention of the regulations as may be specified in the notification.

(4) An enforcement notification must—

- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
- (b) fix a reasonable period for taking the steps required by the notification.

(5) It is the duty of a provider to whom an enforcement notification is given to comply with it.

(6) That duty is enforceable in civil proceedings by the appropriate regulatory authority—

- (a) for an injunction,
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
- (c) for any other appropriate remedy or relief.

(7) If a provider to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification the appropriate regulatory authority may impose a financial penalty on the provider in accordance with section 368J."

(3) In section 368C (duties of the appropriate regulatory authority), omit subsection (2).

(4) After that section insert—

"368CA Code on accessibility for people with disabilities

(1) It is the duty of the appropriate regulatory authority to draw up, and from time to time review and revise, a code giving guidance as to—

(a) the steps to be taken by providers of on-demand programme services so as to meet the requirements of regulations under section 368BC, and

(b) other steps to be taken by providers who are subject to requirements under the regulations to ensure that their services are made progressively more accessible to people with disabilities affecting their sight or hearing or both.

(2) The appropriate regulatory authority must publish the code drawn up under this section, and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to—

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

(b) persons who are blind or partially sighted, and

(c) persons with a dual sensory impairment,

they consider appropriate.”

(5) In section 368J(1) (financial penalties), after “368BB” insert “, 368BD”.

(6) In section 368K(1) (suspension or restriction of service for contraventions)—

(a) in paragraph (a), after “368D” insert “, or of regulations under section 368BC”,

(b) in paragraph (b)—

(i) after “368D” insert “or the regulations”, and

(ii) for “or 368I” substitute “, 368I or 368BC”.

(7) In section 368O(2)(a) (power to demand information), after “368D” insert “, or of regulations under section 368CA,”.

(8) In section 402(2)(a) (procedure for statutory instruments) after “411” insert “or regulations under section 368BC”.

A2. Extracts from Communications Act 2003

303 Code relating to provision for the deaf and visually impaired

(1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance as to—

(a) the extent to which the services to which this section applies should promote the understanding and enjoyment by—

- (i) persons who are deaf or hard of hearing,
- (ii) persons who are blind or partially-sighted, and
- (iii) persons with a dual sensory impairment,

of the programmes to be included in such services; and

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

(2) The code must include provision for securing that every provider of a service to which this section applies ensures that adequate information about the assistance for disabled people that is provided in relation to that service is made available to those who are likely to want to make use of it.

(3) The code must also require that, from the fifth and tenth anniversaries of the relevant date, the obligations in subsections (4) and (5), respectively, must be fulfilled by reference to averages computed over each of the following—

- (a) the twelve month period beginning with the anniversary in question; and
- (b) every twelve month period ending one week after the end of the previous period for which an average fell to be computed.

(4) The obligation to be fulfilled from the fifth anniversary of the relevant date is that at least 60 per cent. of so much of every service which—

- (a) is a service to which this section applies, and
- (b) has a relevant date after the passing of this Act,

as consists of programmes that are not excluded programmes must be accompanied by subtitling.

(5) The obligations to be fulfilled from the tenth anniversary of the relevant date are—

- (a) that at least 90 per cent. of so much of a Channel 3 service or of Channel 4 as consists of programmes that are not excluded programmes must be accompanied by subtitling;
- (b) that at least 80 per cent. of so much of every other service to which this section applies

as consists of programmes that are not excluded programmes must be accompanied by subtitling;

(c) that at least 10 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by audio-description for the blind; and

(d) that at least 5 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be presented in, or translated

into, sign language.

(6) A reference in subsection (4) or in any paragraph of subsection (5) to excluded programmes is a reference to programmes of the description for the time being set out under subsection (7) in relation to that subsection or paragraph and also in relation to the service in question.

Communications Act 2003 Page 396

(7) The code must set out, in relation to subsection (4) and each of the paragraphs of subsection (5), the descriptions of programmes that OFCOM consider should be excluded programmes for the purposes of the requirement contained in that subsection or paragraph.

(8) In complying with subsection (7), OFCOM must have regard, in particular, to—

(a) the extent of the benefit which would be conferred by the provision of 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.

(9) The exclusions that may be set out in the code under subsection (7)—

(a) may include different descriptions of programmes in relation to different services to which this section applies; and

(b) in the case of a service which OFCOM are satisfied (having regard to the matters mentioned in subsection (8)) is a special case, may include all the programmes included in

the service.

(10) The requirements that may be imposed by the code include, in particular—

- (a) requirements on persons providing services to which this section applies to meet interim targets falling within subsection (11), from dates falling before an anniversary mentioned in subsection (3);
- (b) requirements on persons providing such services to meet further targets from dates falling after the anniversary mentioned in subsection (5); and
- (c) requirements with respect to the provision of assistance for disabled people in relation to excluded programmes, or in relation to a particular description of them.

(11) The interim targets mentioned in subsection (10)(a) are the targets with respect to the provision of assistance for disabled people which OFCOM consider it appropriate to impose as targets on the way to meeting the targets imposed in pursuance of subsection (3).

(12) This section applies to the following services—

- (a) S4C Digital or any other television programme service provided by the Welsh Authority for broadcasting in digital form so as to be available for reception by members of the public;
- (b) any licensed public service channel;
- (c) a digital television programme service but not an electronic programme guide;
- (d) a television licensable content service but not an electronic programme guide;
- (e) a restricted television service.

(13) In this section—

“electronic programme guide” means a service which—

- (a) is or is included in a television licensable content service or a digital television programme service; and
 - (b) consists of—
 - (i) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services
- Communications Act 2003 Page 397
- the providers of which are or include persons other than the provider of the guide; and
- (ii) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

“programme” does not include an advertisement

A3. Responding to this consultation

How to respond

- A3.1 Ofcom would like to receive views and comments on the issues raised in this document, by **5pm on Tuesday 3 April 2018**.
- A3.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/odps-accessibility>. You can return this by email or post to the address provided in the response form.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to vodaccessibility@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>).
- A3.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Cathy Taylor- ODPS Accessibility Consultation
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A3.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A3.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A3.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A3.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A3.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 6. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A3.10 If you want to discuss the issues and questions raised in this consultation, please contact Cathy Taylor on 020 7981 3855, or by email to vodaccessibility@ofcom.org.uk.

Confidentiality

- A3.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.
- A3.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A3.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A3.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A3.15 Following this consultation period, Ofcom plans to publish a statement in Spring/Summer 2018.
- A3.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A3.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex x.
- A3.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A4. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A4.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A4.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A4.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A4.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A4.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A4.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A4.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A5. Consultation coversheet

BASIC DETAILS

Consultation title: organisation realise

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing ☐

Name/contact details/job title ☐

Whole response ☐

Organisation ☐

Part of the response ☐

If there is no separate annex, which parts? _____

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

DECLARATION

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

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

Name

Signed (if hard copy)

A6. Consultation questions

Q1 Do you agree with our assessment of the key issues involved to inform regulations in this area?

Q2 Are there other 'access services' which you believe should be specified in any regulations?

Q3 Do you have views on the relative importance of sign-presented programming and sign-interpreted programming?

Q4 To what extent can or should regulations require usability features including (but not necessarily limited to): provision of information; accessible catalogues; and best practice relating to the creation, selection, scheduling and presentation of accessible programming? If you do not believe that these features should be required by the regulations, should the regulations require Ofcom's resulting code to give guidance on these issues?

Q5 Do you agree that audience benefit, cost, and practicability are appropriate grounds for differentiating services/content for the purposes of regulations? Are there other grounds on which you believe ODPS programmes/services should be differentiated (prioritised, excluded, or subject to different requirements)?

Q6 Should the regulations impose more stringent requirements on public services broadcasters' ODPS than on ODPS provided by others?

Q7 Should the regulations limit accessibility requirements to programmes/services which have previously been broadcast with access services, or impose more stringent requirements on these programmes/services?

Q8 Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of audience size? If so, should there be different requirements for excluded programmes/services?

Q9 Should the regulations impose different accessibility requirements on ODPS made available via certain platforms, and if so which?

Q10 Do you have any views or information on appropriate and available means of measuring the audience impact of ODPS?

Q11 Are there particular types/genres of programming which should be excluded from requirements, or subject to reduced requirements, on the grounds of limited audience benefit?

Q12 Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of affordability? If so, should there be different requirements for excluded programmes/services?

Q13 Do you have any views or information on appropriate and available means of quantifying: ODPS-specific revenue; and costs associated with ODPS access services?

Q14 If you are an ODPS provider, do you have information on the likely costs involved in providing access services on your ODPS?

Q15 Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of technical difficulty? If so, should there be different requirements for excluded programmes/services?

Q16 Should regulations include quotas on percentages of programming available with access services? If so, what should the quotas be? If not, what other methods do you consider appropriate for the purpose of setting access service requirements for ODPS?

Q17 Do you think that there should be a phased introduction of requirements? If so, please give details.

Q18 Do you think that the introduction of requirements should prioritise particular types of ODPS programmes or services?

Q19 Should ODPS providers be able to propose alternative arrangements, and if so what type of arrangements?

Q20 Do you have any other comments or information you wish to share in relation to the drafting of regulations on ODPS accessibility?