



Access services on non-domestic channels

Statement

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Section 1

Summary

Introduction

- 1.1 Earlier this year, Ofcom consulted on proposals for the provision of access services (subtitling, signing and audio description) on channels licensed by Ofcom that are available in Member States of the European Union other than the United Kingdom¹.
- 1.2 Ofcom has carefully considered contributions to the consultation from broadcasters and from organisations representing access services users. These contributions are summarised in section 2, together with Ofcom's responses to them.
- 1.3 In the light of responses to the consultation, and of the information available to it, Ofcom has reached the decisions summarised below, and has amended the Code as shown in Annex 1.

Ofcom's decisions

Selection of channels

- 1.4 Channels licensed by Ofcom that are made available in Member States of the European Union other than the United Kingdom will be required to start providing access services with effect from 1 January 2014 if they meet the requisite audience share thresholds and affordability tests (see below).
- 1.5 In accordance with paragraph 1 of the Code, we encourage other channels to provide access services on a voluntary basis, and note that some have already chosen to do so.

Audience share thresholds

- 1.6 Ofcom will use the audience share thresholds at Annex 3 to determine whether channels in particular Member States should provide access services, subject to the affordability test. The basis for these thresholds was set out in paragraphs 3.3 to 3.7 of the consultation and is summarised in paragraph 2.13 of this document.
- 1.7 In determining the audience shares of individual channels, Ofcom will use published data derived from industry standard measures for each Member State where this is available. If no data is available, Ofcom will seek alternative information from broadcasters and others, such as privately-acquired data on audience share or subscription numbers equating to those for a channel already excluded on audience share grounds.

Affordability test

- 1.8 Under the affordability test, channels that cannot afford to meet the assessed cost of providing access services by spending no more than 1% of their relevant turnover will be exempted from doing so.

¹ *Proposals for access services on non-domestic channels*, 23 May 2012, Ofcom (<http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/summary/condoc.pdf>).

- 1.9 Ofcom recognises that broadcasters may incur additional costs in providing subtitling and audio description, where the bandwidth presently available to them is insufficient, and will take these into account. However, for the reasons set out in section 2, Ofcom does not consider it appropriate take account of administrative and compliance costs. In assessing costs for the period from 2013 to 2014, Ofcom will take account of actual costs (or estimates in those cases where contractual arrangements have not yet been made) during the period from 2013 to 2014.
- 1.10 As explained in paragraph 3.22 of the consultation paper, we plan to ask broadcasters to provide data on their actual costs in early 2014, in order to that we can revise the provisional assessment of costs, and use the revised version in determining which channels with the requisite audience share can afford to provide access services from 1 January 2015.

Access service targets

- 1.11 Those channels required to provide access services will need to meet the subtitling and audio description targets set out at the bottom of the range set out in the table that follows paragraph 9 in Ofcom's Code (Annex 1). The arrangements for signing are set out below. In accordance with paragraph 6 of the Code, Ofcom has set out a separate timetable for non-domestic channels that will be subject to access services requirements. They will be required to commence providing access services on the first anniversary of the notice date (1 January 2013). The targets will rise progressively from 10% for subtitling and 2% for audio description from the first anniversary of the notice date to 80% and 10% audio description respectively by the tenth anniversary.
- 1.12 Subtitling in the local language provided to make foreign language programming understandable for local viewers (so-called 'language subtitling') may be counted towards the subtitling targets.
- 1.13 If the cost of meeting these targets in full exceeds 1% of the relevant turnover of a channel, the subtitling targets may be reduced as set out in paragraph 22 to 24 of the Code. No change will be made to audio description or signing quotas. Only if a licensee could not afford to meet the reduced targets would a broadcaster be exempted altogether from providing access services.
- 1.14 Channels that meet the signing thresholds set out in Annex 3 will be required to meet the targets set out in the table that follows paragraph 9 in the Code. Subject to paragraph 1.15 below, channels that do not meet the relevant signing threshold will be exempted from these targets and will instead be required to include at least 30 minutes of sign-presented programming in their schedules each month, unless the broadcaster secures Ofcom's consent to alternative arrangements in accordance with Annex 3 to the Code.

Transitional arrangements for signing

- 1.15 In lieu of the arrangements summarised in paragraph 1.11 above, for a transitional period of two years starting on 1 January 2014, channels may choose to subtitle an additional 5% of content, over and above that required to meet the separate subtitling obligations. Broadcasters wishing to adopt these arrangements should notify Ofcom.
- 1.16 During the transitional period, Ofcom will seek the views of stakeholders, including sign language users and broadcasters, on what arrangements would be most beneficial to sign language users. It is conceivable, for instance, that in countries

where there is not a large amount of sign-interpreted programming available (unlike the UK), sign language users might prefer more sign-interpreted programming to a smaller amount of sign-presented programming.

Changes to the Code

- 1.17 Changes to the Code are marked up on Annex 2; a clean version of the Code, which comes into effect from 1 January 2013, is at Annex 1. Paragraph numbers and references to paragraphs within the text have been amended accordingly.
- 1.18 As proposed in the consultation, Ofcom has made two further changes to the Code that are unrelated to the specific arrangements for non-domestic channels:
- a) as equalities legislation has changed since the Code was first published, paragraph 38 of the Code at Annex 1 makes clear that broadcasters should have regard to their obligations under equalities legislation in general, rather than the Disability Discrimination Act 1995 alone; and
 - b) paragraph 36 of the Code has been amended to reflect the fact that the reporting interval was altered in 2010 to once every six months, rather than once a quarter.
- 1.19 Three further alterations have been made to provide clarity; they do not result in any changes to the proposals upon which Ofcom consulted:
- a) the words ‘as recorded by the nationally-recognised body for this purpose’ have been removed from paragraph 2 in the revised Code at Annex 1 (paragraph 1A in the version showing amendments at Annex 2). As explained in paragraph 1.7 above, Ofcom recognised in the consultation document and has confirmed above that there may be circumstances where it is not possible to rely exclusively on audience share data from industry standard bodies;
 - b) an additional footnote pertaining to paragraph 12 has been added. The purpose of this is to clarify that channels excluded from the default arrangements – in this case, non-domestic channels permitted to start at the bottom of the range of access service targets – may still be exempted from those targets altogether, or have them adjusted, in the light of their audience share and relevant turnover. For example, the relevant turnover of a non-domestic channel might not be sufficient to pay for access services at Level One by spending no more than 1% of relevant turnover. Depending on the size of its relevant turnover, its obligations could be reduced to Levels Two or Three, or it could be exempted altogether; and
 - c) the words ‘UK-derived’ have been deleted from paragraph 24 in order to make clear that the arrangements for assessing the affordability of providing access services apply equally to domestic and non-domestic channels.

Next steps

- 1.20 Ofcom expects to:
- a) publish a final list of non-domestic channels required to provide access services by the end of this year;
 - b) seek views during 2013 from relevant disability organisations and broadcasters on how best to meet the needs of sign language users following the transitional period;

- c) collect data in early 2014 on actual costs incurred by broadcasters, to be used in determining which channels that meet the relevant audience share threshold are deemed able to afford to provide access services from 2015.

Section 2

Consultation responses and Ofcom's conclusions

Introduction

- 2.1 This section summarises responses given to the questions posed in the consultation, as well as other matters raised, and Ofcom's conclusions. With the exception of a few confidential submissions, all the responses have been posted on our website. In formulating our conclusions, we have taken account of all the responses, as well as information provided separately by broadcasters and others, and the information available to Ofcom.
- 2.2 Respondents to the consultation included:
- a) groups representing the interests of people using television access services - Action on Hearing Loss (AHL – formerly the RNID), the Disabled People's Organisation Denmark (DPOD), the European Disability Federation (EDF), the European Federation for the Hard of Hearing (EFHOH), Hearing Link (HL), the European Union of the Deaf (EUD), the National Council for the Blind in Ireland (NCBI), the Royal National Institute for Blind People (RNIB), and the Swedish Disability Federation (SDF); and
 - b) broadcasting-related bodies - the Commercial Broadcasters' Association (COBA)², and confidential responses from four non-domestic broadcasters licensed by Ofcom, as well as a non-confidential response from UTV, the Channel 3 licensee for Northern Ireland, whose service is widely available in the Republic of Ireland.

Application of European law

Ofcom's proposals

- 2.3 In setting out its proposals to require certain non-domestic licensees to provide access services for the benefit of viewers in those countries with sensory impairments, Ofcom said that 'consistent with European law, and with Ofcom's policy, the proposed criteria for selecting which non-domestic channels should provide access services are similar to those applying to domestic channels' (paragraph 1.7).
- 2.4 In particular, Ofcom noted (paragraphs 2.5 to 2.7) that:
- a) Article 7 of the AVMS Directive requires that 'Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability'; and
 - b) Article 2(1) of the Directive requires that 'Each Member State shall ensure all audiovisual media services transmitted by media services under its jurisdiction

² CoBA's members are Discovery Networks, BSkyB, Chinese Channel, Fox International Channels, Viacom International Media Networks, NBCUniversal, QVC, SBS Broadcasting Network, Sony Pictures Television, Turner Broadcasting System, UKTV and The Walt Disney Company. CoBA was formerly known as the Satellite and Broadcasters' Group (SCBG).

comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State'; and

- c) in accordance with Article 2(6), the Directive applies to all audiovisual media services intended for reception in one or more Member States.

2.5 In this connection, Ofcom said that the 'system of law applicable' to services intended for the public in the United Kingdom is comprised within sections 303 to 308 of the Communications Act 2003. The Government had not considered that any new legislation was required to transpose the requirements of Article 7. Accordingly, Ofcom's starting point for developing access service obligations in relation to non-domestic broadcasters was the current arrangements for domestic channels.

Consultation responses

Access service users

2.6 EDF, DPOD and SDF said that it was important to comply with the overall aim of the AVMS Directive – to increase accessibility. The rules should cover as many broadcasters as possible, and should not be open to different interpretations. Requirements applying to non-domestic broadcasters should not be less than those applying to domestic broadcasters.

Broadcasters

2.7 COBA said that it was not convinced that European law required that national legal rules must be applied in the same way in all respects to all broadcasters all the time. It pointed to a legal opinion commissioned by SBS in relation to a different issue under the AVMS Directive which suggested that the principle of non-discrimination in UK law requires that comparable situations must not be treated differently, and different situations must not be treated in the same way, unless such treatment is objectively justified.

2.8 COBA said that it would 'welcome clarification on Ofcom's view on whether it believes it is bound under European law to require exactly the same duties for non-domestic services as domestic ones regardless of audience benefit'. It noted that, in relation to a separate issue, one of its members (SBS) had obtained a legal opinion that Article 2(1) simply means that the same general rules must apply, i.e. the home country must treat all broadcasters established in its jurisdiction as being within its system of rules, not that the rules cannot draw distinctions depending on the circumstances.

Ofcom's conclusions

2.9 Ofcom remains of the view it is bound by the AVMS Directive to ensure that all television services licensed by Ofcom and intended for reception in one or more Member States of the European Union comply with United Kingdom legislation and in particular the Communications Act 2003 and the regulatory obligations imposed on providers under that legislation. Accordingly, in relation to television access services, sections 303 to 308 of the Communications Act set out the statutory regime that applies and section 303 requires Ofcom to publish the Code on Television Access Services.

2.10 As explained in paragraph 1.17 of the consultation document, the proposals are also consistent with Ofcom's policy – Ofcom believes that it is consistent with its statutory

duties to apply broadly the same approach to all broadcasters, whether domestic or non-domestic.

- 2.11 COBA developed its arguments in relation to audience benefit in its response to the question on audience share thresholds, and we deal with those arguments below.
- 2.12 As regards the suggestion that, in order to comply with Article 2(1), it is sufficient that the same general rules should apply to both domestic and non-domestic broadcasters, and that (by implication) the rules may draw distinctions depending on the circumstances, Ofcom considers that its proposals would indeed result in the application of the same general rules to all broadcasters, while enabling distinctions to be drawn depending on the circumstances. For example, the arrangements would:
- a) provide for different audience share thresholds for each country. This ensures that television channels which reach a minimum level of audience are required to provide television access services, notwithstanding that the populations of Member States differ widely;
 - b) allow for language subtitling to be counted towards the subtitling quota, recognising the different circumstances that apply in certain non-domestic markets, where extensive use is made of foreign language programming subtitled in the local language;
 - c) enable broadcasters assessed as being unable to meet the cost of Level One access service obligations to have their subtitling targets reduced to Levels Two or Three, in accordance with the Code;
 - d) allow for access service obligations to be reduced or removed altogether in circumstances where Ofcom is satisfied that these are not practicable on grounds of technical difficulty, until such time as the circumstances change; and
 - e) allow non-domestic broadcasters the option, for a transitional period, of providing additional subtitling in place of meeting signing obligations under the Code, in order to allow them time to investigate alternative arrangements (c.f. the British Sign Language Broadcasting Trust in the UK) that may better meet the needs of sign language users in other Member States.

Audience share thresholds

Ofcom's proposals

- 2.13 The consultation document explained that Ofcom proposed to apply the same approach to selecting which non-domestic channels should provide access services, as it uses in relation to domestic services. In particular, we proposed to derive audience share thresholds for each country based on the approach in the UK, so that selected channels would account for broadly the same minimum amount of viewing in each country, regardless of whether the population in that country is larger or smaller than that of the UK. The proposals were explained in detail in paragraphs 3.3 to 3.7 of the consultation document.
- 2.14 We asked whether consultees agreed with the proposed approach to setting audience share thresholds for other EU Member States, and if not, whether they had practicable alternatives that they would like to propose, which would be comparable to the approach taken to domestic channels.

Consultation responses

Access service users

2.15 AHL, EFHOH, EUD and NCBI agreed with the proposals. In additional comments:

- a) HL agreed in general with the approach, but suggested that where conditions for access services for a channel had been met in one country, then viewers in other countries using the same language feed should also benefit from the same access services;
- b) DH and SDF said that the rules should be easy to understand and cover as many broadcasters as possible; and
- c) HL suggested that in Member States which already required locally-regulated broadcasters to provide access services, provision should be in line with local requirements.

Broadcasters

2.16 Several broadcasters agreed in principle with Ofcom that applying an absolute viewer figure measurement across EU markets was a better approach than applying a common audience share threshold. However, they raised a number of concerns:

- a) COBA said that it was concerned that Ofcom had not developed a full understanding of audience needs across Europe, and said that it did not believe that Ofcom could draw firm conclusions on the benefit for audiences of introducing non-domestic requirements for access services³. Some broadcasters said that the appropriate audience share threshold for each state should take account of factors such as the audience demographic for each Member State, the proportion of audiences in each Member State that have some form of sensory impairment, as well as the extent to which the availability of such services indicated the preparedness of different territories;
- b) COBA drew attention to the higher audience thresholds that some national regulatory authorities had set in their countries. Two broadcasters suggested that Ofcom should relate obligations applying to those of its licensees serving particular Member States to the obligations placed on licensees subject to the domestic regulators in those States; and
- c) some broadcasters were not confident that audience measurement techniques were as accurate as those used in the UK, particularly in the newer Member States; two suggested that Ofcom should be willing to take account of figures provided by broadcasters. One broadcaster said that it was unfair and disproportionate for Ofcom to ask broadcasters to provide evidence of audience share where this was not readily available from published sources; it said that Ofcom should take account of the additional costs of providing such data, as it did not purchase audience share data for all its markets.

³ In particular, CoBA said that Ofcom should demonstrate that sign-presented programming 'is an effective measure that is desired by audiences in non-domestic markets'. We respond to this point in the section headed 'Signing'.

- 2.17 Several broadcasters also made points about the cost of providing access services; these points, together with Ofcom's responses, are summarised under the 'Affordability' heading below.

Ofcom's conclusions

- 2.18 As regards the comments from those organisations representing access service users, Ofcom:
- a) notes the suggestion that, where a single language feed was required to be accompanied by access services in one country, viewers to the same language feed in other countries should also benefit from the same access services. Ofcom understands the attraction of this idea, which may merit further consideration when the provision of access services across Europe has become more established. However, for the time being, it could result in significant additional costs for broadcasters to distribute access services in those markets where the proposed rules would not require them to provide access services. We do not consider that this would be appropriate;
 - b) appreciates that the Code may appear complex, but notes that, in giving effect to clear principles (audience benefit and affordability), the Code must also provide clarity to broadcasters about their obligations. Inevitably, this requires a significant level of detail; and
 - c) does not consider that it would be consistent with the principle set out in Article 2(1) for Ofcom to adopt the audience share thresholds adopted by other national regulatory authorities in their markets. Article 2(1) of the Directive requires that 'Each Member State shall ensure all audiovisual media services transmitted by media service under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State'. The audience share thresholds adopted by some other Member States derive from the rules of their systems of law, not those of the UK.
- 2.19 As regards the comments from broadcasters summarised above, Ofcom:
- a) notes that the requirements placed upon broadcasters to provide access services in the UK stemmed from a public policy objective determined by Parliament, not from a detailed assessment of the numbers of people with specific impairments likely to benefit from those services⁴. By the same token, the requirement upon the UK to extend access service obligations to non-domestic broadcasters results from European legislation that each 'Each Member State shall ensure all audiovisual media services transmitted by media services under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State' (Article 2(1) of the AVMS Directive⁵). As indicated in paragraph 1.7 of Ofcom's consultation paper, the adoption of channel selection criteria that are similar to those applying to domestic channels (specifically, an audience share threshold for each Member State equating to the threshold applying to domestic channels) is also consistent

⁴ Indeed, Ofcom's July 2004 statement made clear that: 'Ofcom does not consider it either necessary or appropriate that it should seek to demonstrate that the policy is justified because the benefits outweigh the costs. Rather, Ofcom considers that its task is to give effect to the legislation in a manner which is proportionate'. *Statement on Code on Television Access Services*, Ofcom, July 2004 (http://stakeholders.ofcom.org.uk/binaries/consultations/tv_access_services/statement/statement.pdf).

⁵ Ofcom applies the same principle to other aspects of regulation. For example, Ofcom applies the same rules on advertising to all licensees, notwithstanding the different rules operated by national regulatory authorities in some of the markets targeted by non-domestic broadcasters. Some of the rules applying to non-domestic broadcasters offer greater commercial freedoms than would apply if they were regulated in their target markets; some are more restrictive.

with Ofcom policy. For these reasons and given the clear legal framework referred to above, Ofcom does not consider it necessary or appropriate to conduct further research in advance of applying access service obligations on non-domestic broadcasters. Any such research would be likely to be protracted, delaying provision of access services to the detriment of users, but could not alter the obligations upon the UK stemming from European law;

- b) does not agree with those broadcasters who argued that Ofcom should adopt different approaches to setting audience share thresholds, such as adopting those operated by other national regulatory authorities. This would depart from the principle set out in Article 2(1) of the AVMS Directive. While we note that higher thresholds would be likely to reduce costs upon broadcasters, Ofcom's proposed approach incorporates mechanisms to ensure that costs are proportionate, and higher thresholds would reduce the benefits to access services users. In any case, it is not clear from broadcasters' representations why alternative approaches would be any more reasonable than the approach proposed by Ofcom; and
- c) noted, in relation to the suggestion that audience measurement techniques used elsewhere in the European Union might not be as accurate as those used in the UK, that reputable audience measurement companies operate throughout the European Union, and provide the standard measures used by broadcasters and advertisers to assess audience shares in different markets. Use of such independently-sourced data avoids the risks of moral hazard that might arise if Ofcom had to rely exclusively on data from broadcasters. Accordingly, Ofcom will use published data where it is available. Where such data is not available, Ofcom will consider seeking alternative information from broadcasters and others, such as privately-acquired data on audience share or subscription numbers equating to those for a channel already excluded on audience share grounds.

2.20 Ofcom has updated the provisional audience share and signing thresholds attached to the consultation document, in order that the new arrangements should start with the most recent data. However, the changes are negligible and do not result in any changes to the provisional notifications of affected channels that we sent separately to broadcasters when we published the consultation document. Accordingly, Ofcom does not expect to review the thresholds until 2014.

Affordability

Ofcom's proposals

- 2.21 Ofcom proposed to adopt the same approach to assessing whether non-domestic licensees could afford to provide access services as it does in relation to domestic broadcasters. The approach was summarised in paragraph 3.8 of the consultation document; in brief, non-domestic licensees that met the relevant audience share threshold would have to provide access services if they could afford to meet the assessed costs by spending no more than 1% of their relevant turnover.
- 2.22 The consultation document explained how Ofcom proposed to assess costs, starting from the approach taken to domestic broadcasters, summarised in paragraph 3.12 of the document. In particular, Ofcom proposed to assume that no additional transmission costs would be incurred for subtitling and audio description. We also proposed to exclude the costs of administration and compliance, on the grounds that most broadcasters already carry out similar tasks. We said that Ofcom would set out

its approach in the statement, in the light of discussions with broadcasters, representations from consultees, and information available to Ofcom.

- 2.23 The consultation document also noted that better data on costs would be available after broadcasters had let contracts, and that we proposed to gather this information in 2014 with a view to using it to inform decisions on which channels should provide access services with effect from 1 January 2015. In the meantime, for the purpose of assessing costs during 2013 and 2014, we proposed to err on the side of caution and assume costs at the top end of the range of estimates already provided by broadcasters.
- 2.24 We asked consultees:
- a) if they had any comments on the appropriateness of applying the approach taken to assessing the costs of domestic licensees to non-domestic licensees, and if so, what alternatives they would propose, and why; and
 - b) whether they agreed with the proposed approach to determining the provisional assessment of costs for 2013 and 2014.

Consultation responses

Access service users

- 2.25 HL agreed that, in general, the same approach should be taken to costs as in the domestic market. However, where different countries used the same language feed, revenues from those countries should be pooled before assessing affordability. Account should also be taken of the fact that subtitling costs varied according to the languages used, and whether subtitles were live or pre-recorded. EUD suggested that the costs should be made public. In principle, EFHOH said that cost should not be a barrier to full access to information; that said, it agreed with the method proposed for assessing provisional costs for 2013 and 2014. It emphasised that the availability of subtitlers did not constitute a practical obstacle.

Broadcasters

- 2.26 COBA and a number of broadcasters said that:
- a) it was not generally correct to assume that non-domestic broadcasters would not incur additional transmission costs for audio description, particularly if they were using third party platforms (COBA and three non-domestic broadcasters). They said costs faced by non-domestic broadcasters were likely to be generally higher than those faced by domestic broadcasters. In particular, incorporating access services in multi-territory feeds was likely to require additional transmission capacity; where capacity-saving measures were feasible they could reduce the viewing quality for all viewers; otherwise, where additional capacity was not available within existing arrangements, it could require very expensive measures, such as splitting feeds in order to provide sufficient audio channels (with and without audio description);
 - b) Ofcom should take account of the additional administration and compliance costs that broadcasters would face (COBA, a broadcaster) at least for a transitional period during which additional staff were likely to be required; and

- c) Ofcom should consider shortening the capital amortisation period and reducing the 1% cap on expenditure for a transitional period of two years as a means of reducing the risk that channels may incur substantial set up costs only to fall out of scope a year later (a broadcaster).

2.27 Those broadcasters who commented agreed with the proposed approach to assessing the costs likely to be incurred in 2013 and 2014. In doing so, one said that it was not appropriate to assume average costs across Europe for the provision of access services.

Ofcom's conclusions

2.28 Ofcom notes the suggestion from HL that where a single language feed is provided to several countries, the revenues from relevant channels in those countries should be pooled when assessing affordability. However, on grounds of consistency, Ofcom does not consider that it would be appropriate to require broadcasters to provide access services where they do not meet the usual audience share and affordability tests. Clearly, it is open to broadcasters to make access services available on a voluntary basis.

2.29 As regards the comments made by broadcasters, Ofcom notes that, in some cases, broadcasters may incur additional costs in transmitting subtitling and audio description, where the bandwidth presently available to them is insufficient. For the period from 2013 to 2014, Ofcom will take account of actual costs so far as possible⁶. Where this is not available, Ofcom will take account of estimates supplied by broadcasters, having regard to comparable data available to it.

2.30 As explained in paragraph 3.22 of the consultation paper, we plan to ask broadcasters to provide data on their actual costs in early 2014, in order that we can revise the provisional assessment of costs, and use the revised version in determining which channels with the requisite audience share can afford to provide access services from 1 January 2015.

2.31 Ofcom has carefully considered whether it is appropriate to take account of additional administration and compliance costs, particularly during the period during which access services are being set up. Ofcom considers that the administrative burden will be ameliorated by a number of factors:

- a) first, broadcasters have been given a long period of advance warning of the intention to apply access service obligations, during which broadcasters have undertaken research for the purposes of preparing responses to Ofcom which will be helpful in preparing to provide access services;
- b) second, the broadcasters that are likely to be required to provide access services are large companies operating a significant number of non-domestic channels. They should therefore have the scope to deploy resources flexibly in the light of fluctuating administrative requirements;
- c) third, the data available to Ofcom indicates that individual broadcasters will be required to provide access services on relatively few of their channels;
- d) fourth, almost all such broadcasters procure subtitling services for some of their channels overseas (including outside Europe) and, in the case of operators with

⁶ Thus, where a broadcaster anticipates meeting its subtitling targets during this period using language subtitling, Ofcom would not assume any additional costs.

UK and US channels, both subtitling and audio description. Many therefore are well placed to use the expertise they have to adapt and extend existing systems to relevant non-domestic channels; and

- e) fifth, Ofcom will aim to ensure that broadcasters have a full year's notice of the requirement to provide access services from 1 January 2014 (subject to obtaining any further information that may be required from broadcasters to determine issues of cost and technical feasibility in a timely manner). This will allow them time to spread the burden on their administrative resources before they incur the variable costs arising from the actual provision of access services.

For these reasons, Ofcom does not consider that there is sufficient justification to depart from the approach set out in paragraph 3.13 of the consultation document.

- 2.32 Ofcom does not consider it appropriate to shorten the established five year capital amortisation period, given that it is within the range of generally accepted periods over which capital expenditure may be depreciated. The effect of shortening the period might be to exclude some channels from obligations to provide access services, to the detriment of access service users. As regards the risk that some broadcasters may incur set-up costs only to become exempt later, this is inherent in arrangements that allow the flexibility for broadcasters to be exempted on grounds of reduced audience share or revenues, wherever the limits are set.
- 2.33 Where necessary, Ofcom will be in touch with broadcasters of channels that meet the audience share and affordability tests to complete our assessment of relevant costs.

Technical difficulty

Ofcom's proposals

- 2.34 Ofcom's consultation proposed to apply the existing Code, with the changes marked up in Annex 2, to both domestic and non-domestic broadcasters. Paragraph 10 of the existing Code says that 'Television access services need not be provided if Ofcom is satisfied that this would be impracticable on grounds of technical difficulty ...'.

Consultation responses

Access service users

- 2.35 EFHOH said that the availability of technology should not be a reason for excluding broadcasters from providing access services.

Broadcasters

- 2.36 COBA said that 'it was crucial that the regulator does not assume that industry can readily replicate UK practices in a wide variety of non-domestic markets'. COBA and a broadcaster pointed out that it was less common for non-domestic channels to control the bandwidth that operators use, and that in some cases, platforms will restrict what is possible. It pointed out that in some markets such as Poland, broadcasters will be dealing with up to 300 platforms, and that in some markets, analogue transmission remains the norm. COBA said that Ofcom should consider whether it is proportionate to require a company to invest in technology that may become out of date in the medium to long term.

- 2.37 While COBA acknowledged that Ofcom proposed to consider exempting services which met the broad criteria set out in paragraph 10 of the Code, it was concerned that this placed the onus on licensees to demonstrate a lack of technical feasibility. It asked for Ofcom to consult with the industry on the process for appeals, including setting detailed criteria for Ofcom's decision-making and timetables. It also asked that the examples of technical difficulty be broadened to include issues that are more relevant to non-domestic services.
- 2.38 In other comments:
- a) some broadcasters suggested that the time needed to surmount technical difficulties might make it difficult or impracticable to commence the provision of access services by January 2014; and
 - b) UTV said that the Channel 3 service for Northern Ireland was distributed in the Republic of Ireland by UPC, whose set top boxes supported subtitling but not audio description. It would not, therefore, be practicable for UTV to ensure the provision of audio description in the Republic.

Ofcom's conclusions

- 2.39 Ofcom recognises that the circumstances of non-domestic markets differ from those of the UK. Indeed, in paragraph 3.33 of the consultation document, we explained that we had considered representations by broadcasters, and accepted that, in a number of cases, it would be necessary to plan for and implement complex processes in order to prepare and deliver access services to end-users. Ofcom noted that, in general, it did not consider that technical difficulties were likely to be insuperable. Accordingly, Ofcom proposed to take the same approach to considering exemptions on grounds of technical difficulty as in relation to domestic channels, as set out in paragraph 10 of the existing Code (Annex 2).
- 2.40 Having considered the points made by COBA and broadcasters, Ofcom remains of the view that, in general, technical difficulties are unlikely to be insuperable obstacles to the provisions of access services by January 2014, for a variety of reasons:
- a) on the basis of information from a variety of sources (including other national regulatory authorities, broadcasters, and published information) Ofcom understands that, for the most part, the infrastructure used in other Member States to deliver television services already supports closed subtitling, and that language subtitling is sometimes made available. The capability of the infrastructure to deliver access services is likely to develop further in the future, as digital delivery becomes the norm, and as platform providers respond to the plans of national regulatory authorities in many States to extend access service requirements to broadcasters that they regulate;
 - b) Ofcom has given broadcasters substantial advance warning of its intention to extend access services obligations to non-domestic channels. We first wrote to non-domestic broadcasters about access service provision in October 2009. In the intervening period, it is clear from the responses that broadcasters have provided to Ofcom's information requests that they have begun to scope the work needed to deliver access services; and
 - c) in planning implementation, most non-domestic broadcasters will be able to draw on the technical expertise that they have acquired in providing access services over multiple platforms in the UK (and, in some cases, other Member States). A

significant number of non-domestic broadcasters are subsidiaries of US broadcasters, which are already required to provide subtitling and audio description (known in the US as closed captioning and video description, respectively).

- 2.41 We remain of the view that the provisions in the Code are flexible enough to deal with those cases where it is genuinely impracticable to provide access services either at all, or for the time being – for example, where third-party platforms restrict the scope to provide some access services, as in the Republic of Ireland. Nonetheless, as the Code provides, Ofcom would expect broadcasters ‘to use reasonable endeavours to ensure that ... 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 and cable)’. In this connection, it is important to recall that the purpose of access service obligations is to help people with sensory impairments to understand and enjoy television – ensuring that they can receive such services is clearly crucial to this objective.
- 2.42 We do not consider that adding examples to those set out in the Code is necessary to make the principle clearer, nor do we believe that it is appropriate to provide a special appeals procedure in relation to this particular aspect of its functions. Ofcom is constrained to act reasonably, and it is open to aggrieved parties to seek a judicial review of decisions that it takes in the exercise of its functions.

Commencement of access services

Ofcom’s proposals

- 2.43 For the reasons explained in detail in paragraphs 3.24 to 3.37 of the consultation document, Ofcom said that it was minded to require broadcasters providing access services from January 2014 to commence with the targets at the bottom of the range set out in the Code on Television Access Services. We asked consultees whether they agreed.

Consultation responses

Access service users

- 2.44 EUD and EFHOH accepted the proposals, though EFHOH said that it saw the 80% subtitling target as a minimum, and hoped that the review of communications legislation within the UK would result in the statutory target being raised to 95%. HL agreed with the general proposition that access services should be provided with effect from 1 January 2014, but wanted provision to be accelerated so that final targets were reached within five years.
- 2.45 EDF agreed that quotas should increase over time, but that attention should be paid as much to quality as to quantity. EDF and NCBI pointed out that, in some cases, such as services provided to the Republic of Ireland by BSkyB, there would be no need to allow time to ramp up the quotas, as access services provided for the UK could be made available. NCBI also pointed out that Sky Ireland, UPC, and Saorview (the operators, respectively, of satellite, cable and digital terrestrial services in the Republic of Ireland) already provided subtitling, and that audio description was available from Sky and Saorview.

Broadcasters

- 2.46 COBA welcomed the suggestion that it would be disproportionate to require channels to be classified as if they had been broadcasting since 2003 but reiterated its concerns that issues of technical feasibility and cost (amongst other things) meant that a one-size fits all approach to obligations would not be appropriate.
- 2.47 Responses from individual broadcasters varied. One agreed with the proposal, two agreed in principle (subject to caveats on technical difficulties, summarised under 'Technical Difficulty' above), and another said that the arrangements needed to be reviewed in the light of technical, implementation and resourcing issues.

Ofcom's conclusions

- 2.48 Ofcom notes that respondents were broadly in agreement that the baseline for targets should be at the bottom of the range set out in the Code. However, broadcasters made a number of comments in relation to audience demographics, cost and technical difficulty which they felt should lead Ofcom to reconsider the requirement to commence access services from January 2014 (irrespective of the baseline); these are dealt with above under the headings of 'Audience share threshold', 'Affordability' and 'Technical difficulty' respectively. Ofcom confirms that those broadcasters required to provide access services from January 2014 will start at the bottom of the target range set out in the Code.
- 2.49 As regards other comments by respondents:
- a) Ofcom understands the desire of the EFHOH to see subtitling targets increased to 95% through the UK Government's review of communications legislation. Decisions on whether to initiate changes to the statutory targets are, of course, a matter for the Government;
 - b) as regards HL's wish for the achievement of the targets to be accelerated, Ofcom notes that the targets require 50% of content to be subtitled from the fifth anniversary of commencement, and considers that the current progressive targets strike a reasonable balance between the needs of access service users and the burden placed upon broadcasters. In this connection, Ofcom notes that domestic broadcasters have achieved efficiencies that have enabled them to afford rising targets; had high targets been imposed before broadcasters gained these efficiencies through experience, it is possible that some would have been exempted on cost grounds; and
 - c) Ofcom agrees with EDF that access services users want both quality and quantity in access services. In this regard, Ofcom is working with major domestic broadcasters on approaches to improving the quality of subtitling, and will share the results of this with all Ofcom-licensed broadcasters in due course.

Subtitling

Ofcom's proposals

- 2.50 Ofcom proposed that, in the case of channels that provided so-called 'language subtitling' (intended to allow all viewers in a particular territory to understand programming that is not provided in the language of that territory), such subtitling should count towards subtitling targets. We asked whether consultees agreed.

Consultation responses

Access service users

- 2.51 EFHOH agreed with the proposal, but noted that some of its members did not share this view. EDF, EUD, HL and NCBI said language subtitling was not an adequate substitute for subtitling intended for deaf and hard of hearing people, and should not count towards quotas, as it does not convey other programme sounds, such as gunshots, sirens etc. EDF suggested that broadcasters could provide both language and hard of hearing subtitling in closed formats, allowing the viewer to select the appropriate mode.

Broadcasters

- 2.52 COBA and those broadcasters who responded agreed that language subtitling should count towards access service targets.

Ofcom's conclusions

- 2.53 Ofcom recognises that language subtitles do not convey to hearing-impaired viewers the full range of information provided by hard-of-hearing subtitles. However, given that it is common for foreign-language programmes to be accompanied by 'open' subtitles that form an integral part of the picture, it would be impracticable to provide additional subtitling (even if it only comprised information about non-speech sounds) without obscuring a significant part of the picture. This would have a detrimental effect on the viewing experience for hearing-impaired viewers. We will ask broadcasters to investigate the practicability of incorporating information about non-speech sounds in subtitles.
- 2.54 In the light of these considerations, Ofcom remains of the view that it would be appropriate to count language subtitling towards access service targets in the case of non-domestic channels. This approach is consistent with existing practice for domestic channels; on the relatively rare occasions when foreign language programming is shown on UK channels, any subtitling provided counts towards access service targets.

Signing

- 2.55 For the reasons set out in paragraphs 3.45 to 3.54 of the consultation document, Ofcom said that it proposed to require broadcasters with an audience share below the signing threshold (see Annex 3 of the document) to meet their signing obligations by:
- a) scheduling 30 minutes of sign-presented programming once a month, in accordance with paragraph 12 of the Code; or
 - b) securing Ofcom's consent to alternative arrangements in accordance with Annex 3 to the Code; or
 - c) for a transitional period of two years from 1 January 2014, subtitling an additional 5% of content, over and above that required to meet the separate subtitling obligations. Thereafter, broadcasters would need to comply with the requirements set out in (a) or (b) above.

- 2.56 We asked whether consultees agreed that, for a transitional period of two years from 1 January 2013, broadcasters should be allowed the alternative of providing additional subtitling in place of signing, in order that they can have the opportunity to devise alternative arrangements that may be more beneficial to sign language users.

Consultation responses

Access service users

- 2.57 EUD and EDF supported the proposal for transitional arrangements, but both were concerned that adequate sign language access should be provided once this period ended; EUD said that any arrangements after the transitional period should be the subject of consultation with organisations representing the interests of deaf people. EFHOH also supported the proposals, and said that provision of community programmes would help to raise awareness of the deaf community.

Broadcasters

- 2.58 COBA said that the requirements for sign-presented programming would represent a high-cost approach for non-domestic services, and that Ofcom should first demonstrate that this is an effective measure that is desired by audiences in non-domestic markets. It referred to research carried out by Ofcom in the UK and suggested that this found that two thirds of hearing-impaired people with the strongest signing skills expressed a preference for subtitling over signing⁷.
- 2.59 Several broadcasters agreed with the proposal for transitional signing arrangements, during which broadcasters could provide additional subtitling. One suggested that it might be difficult for broadcasters to find a viable equivalent to the BSLBT arrangement, resulting in the need to make disproportionately expensive sign-presented programming. Another suggested that signing was not currently provided in a number of markets, and that its research suggested that audiences in such countries were neither familiar with, nor demanded, signing. It called upon Ofcom to undertake further research, and suggest alternatives. A number of broadcasters wanted to discuss the idea of providing sign-interpreted programming instead.
- 2.60 One broadcaster pointed out that it might not be possible to use the same form of signing for all countries served by a multi-country feed.

Ofcom's conclusions

- 2.61 Ofcom notes that:
- a) there was general agreement amongst respondents that broadcasters should be allowed the option of providing additional subtitling for a transitional period, but that EUD (which principally represents the interests of deaf, rather than hard of hearing, people) was concerned that there should be appropriate signing arrangements thereafter. It asked that organisations representing the interests of deaf people be consulted on these arrangements; and
 - b) broadcasters have expressed concerns about the provision of sign-presented programming on cost grounds, and have suggested that Ofcom should establish what the preferences of sign language users are for access services. In particular, broadcasters have asked that Ofcom consider allowing sign-

⁷ *Provision of Access Services - Research Study Conducted for Ofcom*, Ofcom, March 2006 (<http://stakeholders.ofcom.org.uk/binaries/consultations/accessservs/annexes/provision.pdf>)

interpreted programming, subtitling or other alternatives instead. As Ofcom acknowledged in paragraph 3.49 of the consultation document, it would not be proportionate to require channels providing a single feed to several countries using different forms of sign language to provide programming in multiple signing formats.

- 2.62 In the light of representations from consultees, Ofcom reaffirms the importance of ensuring that the arrangements following the transitional period are best suited to sign language users. It is conceivable, for instance, that in countries where there is not a large amount of sign-interpreted programming available (unlike the UK), sign language users might prefer a greater volume of sign-interpreted programming to a smaller amount of sign-presented programming. Ofcom therefore proposes to seek the views of stakeholders, including sign language users and broadcasters, during the transitional period.

Consequential changes to the Code

Ofcom's proposals

- 2.63 In Annex 3 to the consultation document, we set out the changes we proposed to make to the Code in order to extend access service obligations to non-domestic channels. We also proposed clarificatory changes in relation to obligations under equalities legislation and the frequency of reporting. We asked consultees whether they had any comments on the proposed changes.

Consultation responses

Access service users

- 2.64 HL said that substituting semi-annual reports for quarterly reports might mean that the provision of access services was unevenly spread throughout the year.

Broadcasters

- 2.65 Most broadcasters who responded had no specific comments on the proposed revisions to the Code, but made clear that this was subject to their comments on other aspects of the consultation document (some of which would have required consequential changes to the proposed amendments to the Code).

Ofcom's conclusions

- 2.66 Ofcom considers it unlikely that, absent quarterly reports, provision of access services might be uneven through the year. Broadcasters (or more often, their access services contractors) have dedicated resources to provide access services, and it is usually more efficient to keep these resources continuously employed in providing a smooth and predictable level of output.
- 2.67 Ofcom stopped publishing quarterly reports after the second quarterly report in 2010. This was done to help us cope with the significant savings we needed to make to meet the targets set by the Government for all public sector bodies. Before doing so, we considered the possible consequences. We started with quarterly targets initially because we wanted early warning in case channels that had not previously provided subtitling failed to get off the ground. Access service obligations have been in place for some years now, and we are reasonably confident that channels have good systems in place to ensure that they deliver sufficient subtitling to meet their quotas.

We would expect the same to be true of non-domestic broadcasters, many of which already provide access services on some of their UK channels.

- 2.68 Ofcom infers from the responses of broadcasters that, although they may not agree with the revised provisions of the Code, they are in no doubt as to their meaning. Indeed, many broadcasters will be familiar with the current Code, as they already provide access services on some of their domestic services. Ofcom recognises that the same is not true for organisations without that experience, particularly if they operate in a language other than English.

Impact assessment

- 2.69 Ofcom asked whether consultees had any comments on the impact assessment at Annex 2 to the consultation document. The reference to Annex 2 was inadvertent and stemmed from an earlier draft; in accordance with Ofcom's current practices, the whole of the document constitutes an impact assessment. The main points were summarised in paragraphs 3.55 to 3.59 in the section headed 'Impact on viewers and broadcasters'.

Consultation responses

- 2.70 EFHOH said that the impact assessment should include the impact of the exclusion of hard of hearing people from accessing television services.
- 2.71 COBA and a broadcaster said that the consultation did not include an impact assessment, either to assess the benefits for audiences or to look at the costs for industry.

Ofcom's conclusions

- 2.72 In Ofcom's view, the assessment of the impact upon broadcasters and viewers is appropriate, given that Ofcom's role in this case is not to assess whether the proposals are justified by a cost-benefit analysis, but to put in place regulation that is proportionate. As explained in the consultation document and paragraph 2.19(a) above, it is necessary for Ofcom to put in place arrangements for the provision of access services by non-domestic broadcasters in order that the UK could comply with its obligations under European law.
- 2.73 The mechanism we proposed for ensuring that the burdens on broadcasters are proportionate – limiting obligations to those channels that meet audience share and affordability tests – is the same as for domestic channels. As paragraph 3.59 of the consultation paper explained, Ofcom has applied this approach to domestic channels for several years, and it has enabled the regulatory burden to be adjusted to reflect changing circumstances. Ofcom has also made clear that, pending the availability of data based on contractual arrangements, it will use data on actual costs or estimates during the period 2013 to 2014, and consult on the arrangements that will apply thereafter. Ofcom believes that, taken together, these arrangements ensure that broadcasters will not be required to shoulder disproportionate burdens.
- 2.74 As regards the impact on viewers with sensory impairments, we note that organisations representing access service users are supportive of the proposals, and that Ofcom has agreed to proposals from the European Union of Deaf (principally representing sign language users) to consult further on what alternatives to the regulatory arrangements might be suitable after the transitional period.

2.75 Against this background, and for the reasons set out in paragraph 2.19(a) above, we do not consider that it would be either necessary, appropriate or proportionate to undertake the detailed research that would be required to analyse the audience demographics of each Member State to assess the audience benefit that would be derived from the provision of access services on channels licensed by Ofcom. Any such research would be likely to be protracted, delaying provision of access services to the detriment of users, but could not alter the obligations upon the UK stemming from European law.

Other issues

2.76 A number of other points were made by consultees:

- a) EDF, DPOD and SDF said that there was a need for spoken or 'audio' subtitles, which would help partially-sighted people amongst others, and which were common in Sweden⁸;
- b) EFHOH wanted subtitling to be displayed in block form on a black background, to aid legibility;
- c) HL said that, if revenue considerations required a reduction in access service targets in line with paragraph 19 of the Code, this should be applied to audio description as well as subtitling;
- d) COBA and a number of broadcasters asked Ofcom to clarify the meaning of section 3.8(b) of the consultation document, which stated that 'where a non-domestic licensee operates more than one channel in a particular territory, Ofcom would take account of the relevant turnover of all channels in common ownership that meet the audience share threshold in that country, and apply the rules set out in paragraph 2 of the Code ...'; and
- e) one broadcaster said that if viewers in one territory to a multi-country feed were able to use access services, this could detrimentally affect the viewer experience in territories where access services were not required.

Ofcom's conclusions

2.77 As regards these points, Ofcom:

- a) notes that, unlike audio description, audio subtitles do not describe on-screen action, so would not be a complete substitute for audio description. While it might help viewers to channels with a high proportion of foreign language programming, even these channels generally have a sufficient proportion of local language programming on which audio description could be provided. Ofcom does not consider, therefore, that it could reasonably require broadcasters to provide audio subtitling in addition to audio description;
- b) notes that Ofcom's guidance (Annex 2 to the Code) recommends that subtitling be provided on a black background. However, we are aware that views about the benefits of this vary amongst hearing-impaired viewers and users of language subtitles, and that some people prefer translucent backgrounds. Accordingly, we

⁸ *Requirements for accessibility of television broadcasting for persons with functional impairments*, Swedish Broadcasting Authority, 23 June 2011 (<http://radioochtv.se/Documents/Beslut/Requirements%20for%20accessibility%20of%20television%20broadcasting%20for%20persons%20with%20functional%20impairments.pdf?epslanguage=sv>)

consider that this is a matter best left to the judgement of broadcasters in consultation with disability groups;

- c) notes that, given the significantly lower maximum targets for audio description (10%) and signing (5%) by comparison with that for subtitling (80%), reductions in these targets would have a more detrimental effect on people who use those access services than cuts in subtitling would have on hearing-impaired viewers;
- d) as regards the meaning of paragraph 3.8(b) of the consultation document, the footnote referring readers to the Amended Statement of Charging Principles should have appeared earlier in the sentence, immediately after 'relevant turnover'. The Amended Statement of Charging Principles explains what constitutes relevant turnover. The placement of this footnote may have given the impression that it has a bearing on Ofcom's treatment of channels in common ownership, but it does not. For the avoidance of doubt, as regards channels in common ownership, Ofcom proposed in the consultation paper to treat non-domestic services in exactly the same way as domestic services. At present, the revenues of UK-targeted channels in common ownership that meet the audience share threshold are averaged to determine whether they meet the affordability criterion. By the same token, the revenues of channels in common ownership targeted at another Member State that meet the audience share threshold will be averaged to determine whether they meet the affordability criterion. In either case, where the averaged revenue does not meet the affordability criterion, Ofcom would eliminate channels with the lowest revenues until the affordability criterion was reached. If the averaging of relevant turnover would mean that none of the channels would need to provide access services, Ofcom will assess eligibility on the basis of the individual relevant turnover attributable to each channel; and
- e) Ofcom does not agree that providing access services to viewers to a multi-country feed in one territory would detrimentally affect the viewer experience in territories where access services are not required. It is, of course, open to broadcasters to provide access services on channels where they are not required to by regulation, and some broadcasters choose to do so.

Annex 1

Ofcom's Code on Television Access Services (as amended)

[this version of the Code comes into effect from 1 January 2013]

Summary

1. This code¹ 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 and primarily intended for reception by members of the public within the European Union. Guidance on practices to be followed in providing access services is set out in Appendix 2 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;
 - (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.

Statutory provisions

3. Under Sections 303 to 305 of the Communications Act 2003 ('the Act'), Ofcom is required to draw up, and from time to time review and revise, a code giving guidance as to the extent to which television services should promote the understanding and enjoyment by persons who are deaf or hard of hearing, as well as those who are blind or partially sighted, or who have a dual sensory impairment (deafblind).
4. The code is to apply to licensed public service channels, digital television programme services, television licensable content services (TLCS), and restricted television services, as well any digital television programme services (DPS) provided by the Welsh Authority (including S4C Digital). The BBC Agreement² 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 the table below. The targets apply to the anniversary of the relevant date for the service in question.

6. The ‘relevant date’ for the purpose of determining the tenth anniversary of 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 on which the provision of that 2003, the date is the 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 10 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 programmes⁹ other than advertisements and programmes that have been excluded by reference to the factors summarised in paragraph 11. 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. 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. 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 the Table below¹⁰.

Anniversary of relevant date¹¹	Subtitling	Signing	Audio Description
First	10%	1%	2%
Second	10%	1%	4%

⁹ 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.

¹⁰ 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/>.

¹¹ Or such date as Ofcom may determine, as explained in paragraph 6.

Third	35%	2%	6%
Fourth	35%	2%	8%
Fifth	60%	3%	10%
Sixth	60%	3%	10%
Seventh	70%	4%	10%
Eighth	70%	4%	10%
Ninth	70%	4%	10%
Tenth	80%	5%	10%

10. The targets and interim targets represent minimum obligations and apply in each year, from each anniversary referred to in the table. 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

11. 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

12. Having regard to these factors, the following television services are excluded from providing television access services if their share of viewing falls below the audience share threshold¹². The audience share threshold for:

¹² The provisions in paragraphs 12 to 14 apply to all television services that are required to provide access services (otherwise than by reason of the provisions in paragraph 12 to 14) including those

- 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 4.

13. 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 all UK households over a 12 month period ('audience share') of 1% or less;
- b) non-domestic television services is the average audience share indicated in Annex 4.

14. 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.

15. 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.

16. Having regard to this, Ofcom requires that television services achieving an audience share between the relevant audience share and signing thresholds should, from the first anniversary of the relevant date, broadcast between 7am and 11pm local time 30 minutes of programming presented in sign language each month¹³. Ofcom will keep this requirement under review.

17. Broadcasters may, if they wish, propose alternatives to the arrangements set out in paragraph 13, and Ofcom will consider these in the light of the factors set out in paragraph 10, 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.

18. 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 29 below) in the following year¹⁴.

19. 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,

that have been exempted in the circumstances described in paragraph 7, which have had different targets applied to them.

¹³ Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

¹⁴ 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.

Ofcom will notify the broadcaster that the obligation will discontinue at the end of the calendar year in question.

20. Television services primarily intended for reception by members of the public outside the European Union are exempt from television access service requirements.

Technical difficulty

21. 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 signing problematic.

Cost

22. Ofcom has determined average costs per hour of providing programming with subtitling, signing and audio description, including any alternative requirements imposed in accordance with paragraph 14. 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.

23. 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.

24. 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'¹⁵. Only broadcasters unable to afford Level Three costs will be exempt from provision altogether on grounds of cost.

¹⁵ As defined in Ofcom's Statement of Charging Principles, 8 February 2005. (www.ofcom.org.uk/consult/condocs/socp/main/?a=87101).

25. In determining the applicable amount of relevant turnover, Ofcom will have regard to the most recent declarations of relevant turnover.

26. In the case of channels in common ownership¹⁶, 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.

27. 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

28. 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

29. 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 calendar year 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.

30. 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

¹⁶ 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://www.ofcom.org.uk/consult/condocs/media2/statement/>).

that year, or earlier if the licensee demonstrates to Ofcom's satisfaction that continuation of the obligation would threaten the viability of the service.

31. 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 19 above. Ofcom will determine which level of annual target should apply in consultation with the licensee.

32. 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

33. Broadcasters are required to observe the standards set out in the Guidelines on Television Access Service Standards in Annex 2 to the code.

34. 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

35. 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 in the United Kingdom 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.

36. 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 35 above should be used.

Programming and scheduling

37. 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 paragraph 16 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

38. 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

39. 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

40. This code is subject to periodic review.

Annex 2

Revisions to Ofcom's Code on Television Access Services

[additions to the Code previously in force are underlined; deletions are scored through. Paragraphs have been renumbered in the clean version of the Code at Annex 1]

Summary

1. This code¹ 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 and primarily intended for reception by members of the public within the European Union. Guidance on practices to be followed in providing access services is set out in Appendix 2 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.

1A. 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;
- (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.

Statutory provisions

2. 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).

3. 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 Agreement² 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.

4. 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 the table below. The targets apply to the anniversary of the relevant date for the service in question.

5. The ‘relevant date’ for the purpose of determining the tenth anniversary of 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 on which the provision of that 2003, the date is the 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 10 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.

6. 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

7. The statutory targets for broadcasters are expressed as percentages of the service, including all programmes¹⁷ other than advertisements and programmes that have been excluded by reference to the factors summarised in paragraph 10. 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. 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.

8. 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 the Table below¹⁸.

Anniversary of relevant date¹⁹	Subtitling	Signing	Audio Description
First	10%	1%	2%
Second	10%	1%	4%

¹⁷ 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.

¹⁸ 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/>.

¹⁹ Or such date as Ofcom may determine, as explained in paragraph 5.

Third	35%	2%	6%
Fourth	35%	2%	8%
Fifth	60%	3%	10%
Sixth	60%	3%	10%
Seventh	70%	4%	10%
Eighth	70%	4%	10%
Ninth	70%	4%	10%
Tenth	80%	5%	10%

9. The targets and interim targets represent minimum obligations and apply in each year, from each anniversary referred to in the table. 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

10. 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

11. Having regard to these factors, the following television services are excluded from providing television access services if their share of viewing falls below the audience share threshold²⁰. The audience share threshold for:

²⁰ The provisions in paragraphs 11 to 11B apply to all television services that are required to provide access services (otherwise than by reason of the provisions in paragraph 11 to 11B) including those

- a) domestic television services achieving 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 4.

11A. Ofcom would expect to exclude television services achieving an audience share of 4% or less from providing signing if they do not meet the signing threshold. The signing threshold for:

- c) domestic television services achieving is an average audience share of all UK households over a 12 month period ('audience share') of 1% or less;
- d) non-domestic television services is the average audience share indicated in Annex 4.

11B. Ofcom but 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 4% the signing threshold should be excluded.

12. 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.

13. Having regard to this, Ofcom requires that television services achieving an audience share between ~~0.05% and 1%~~ the relevant audience share and signing thresholds should, from the first anniversary of the relevant date, broadcast between 7am and 11pm local time 30 minutes of programming presented in sign language each month²¹. Ofcom will keep this requirement under review.

14. Broadcasters may, if they wish, propose alternatives to the arrangements set out in paragraph 13, and Ofcom will consider these in the light of the factors set out in paragraph 10, 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.

15. 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 26 below) in the following year²².

16. 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,

that have been exempted in the circumstances described in paragraph 6, which have had different targets applied to them'.

²¹ Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

²² 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.

Ofcom will notify the broadcaster that the obligation will discontinue at the end of the calendar year in question.

17. Television services ~~aimed primarily~~ intended for reception by members of the public outside the European Union at an overseas audience are exempt from television access service requirements.

Technical difficulty

18. 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 ~~subtitling or~~ signing problematic.

Cost

19. Ofcom has determined average costs per hour of providing programming with subtitling, signing and audio description, including any alternative requirements imposed in accordance with paragraph 13. 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.

20. 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.

21. 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 ~~UK~~

derived 'relevant turnover'²³. Only broadcasters unable to afford Level Three costs will be exempt from provision altogether on grounds of cost.

22. In determining the applicable amount of relevant turnover, Ofcom will have regard to the most recent declarations of relevant turnover.

23. In the case of channels in common ownership²⁴, 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.

24. 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

40. Other television services excluded by section 303 of the Communications Act 2003 from the requirement to provide television access services are:

- d) those comprising advertising only, for example, a shopping channel;
- e) electronic programme guides; and
- f) those licensed outside the United Kingdom.

Changes in audience share and relevant turnover

41. 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 calendar year 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:

- d) subject to a requirement to provide television access services;
- e) subject to a different Level of provision; or
- f) excluded from the requirement to provide television access services.

²³ As defined in Ofcom's Statement of Charging Principles, 8 February 2005. (www.ofcom.org.uk/consult/condocs/socp/main/?a=87101).

²⁴ 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://www.ofcom.org.uk/consult/condocs/media2/statement/>).

27. 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.

28. 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 16 above. Ofcom will determine which level of annual target should apply in consultation with the licensee.

29. 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

30. Broadcasters are required to observe the standards set out in the Guidelines on Television Access Service Standards in Appendix 2 to the code.

31. 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

32. 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 in the United Kingdom 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.

33. 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 32 above should be used.

Programming and scheduling

34. 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 paragraph 13 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.

Disability Discrimination Act Equal Opportunities legislation

35. Broadcasters will need to have regard to their obligations under ~~the Disability Discrimination Act 1995~~ 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

42. Broadcasters to whom this code applies:

- are required to submit ~~quarterly~~ 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
- g) 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

37. This code is subject to periodic review.

Annex 3

Audience share and signing thresholds

EU Member State	Audience share threshold	Signing threshold
Austria	0.56%	11.28%
Belgium	0.36%	7.15%
Bulgaria	0.40%	8.00%
Cyprus	5.00%	*
Czech Republic	0.34%	6.83%
Denmark	0.64%	12.74%
Estonia	2.14%	42.74%
Finland	0.74%	14.87%
France	0.05%	1.07%
Germany	0.04%	0.84%
Greece	0.24%	4.79%
Hungary	0.26%	5.21%
Ireland	0.84%	16.74%
Italy	0.05%	0.93%
Latvia	1.32%	26.45%
Lithuania	0.96%	19.16%
Luxembourg	4.83%	96.60%
Malta	5.92%	*
Netherlands	0.23%	4.62%
Poland	0.07%	1.48%
Portugal	0.32%	6.48%
Romania	0.12%	2.40%
Slovakia	0.66%	13.24%
Slovenia	1.81%	36.20%
Spain	0.06%	1.29%
Sweden	0.43%	8.69%
United Kingdom	0.05%	1%

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