



Proposals for access services on non-domestic channels

Consultation

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Section 1

Summary

Introduction

- 1.1 Within the UK, many people with hearing or visual impairments are nonetheless able to understand and enjoy television because of the access services (subtitling, signing and audio description) that Ofcom requires the more popular channels to provide. It is clear from the feedback that Ofcom has received that these access services are particularly valued by viewers with sensory impairments.
- 1.2 This document:
- a) seeks views on how Ofcom proposes to require certain television licensees which serve other European countries (non-domestic channels) to provide access services for the benefit of viewers in those countries with sensory impairments; and
 - b) explains the proposed arrangements and when these would come into force, and invites views from interested parties by **5pm on 11 July 2012**. In drawing up these arrangements, we have been conscious of the costs that they would impose on broadcasters, and have sought to ensure that they are both proportionate and consistent with UK and European law.

Background

- 1.3 In areas where the European law on audiovisual media services – the Audiovisual Media Services (AVMS) Directive - imposes obligations, Ofcom is required to regulate all broadcasters under its jurisdiction – both domestic and non-domestic – in the same way.
- 1.4 Changes to the Directive that came into force in December 2009 required Member States to ‘encourage media service providers [including broadcasters] under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability’¹.
- 1.5 Ofcom has already put in place measures to ensure that relevant domestic channels make their services gradually more accessible to people with visual or hearing disability. As a consequence of the change in European law, Ofcom now needs to make similar arrangements in relation to relevant non-domestic channels. For this reason, we are consulting on:
- a) proposals to apply access service obligations to non-domestic channels on terms equivalent to those applying to domestic services; and
 - b) consequential changes to the Code on Television Access Services(‘the Code’) (Annex 2).

¹ Article 7, Audiovisual Media Services Directive (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>)

Proposed arrangements

- 1.6 Subject to the outcome of this consultation, Ofcom proposes to publish a list of non-domestic channels serving other EU Member States that meet the criteria described below by the end of this year, and to require those channels to begin providing access services from 1 January 2014.
- 1.7 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. Thus, as explained in more detail in Section 3, access service obligations would apply to those channels meeting both of the following tests:
 - a) an audience share equating to the threshold applying to domestic channels; and
 - b) the ability to meet the assessed cost of providing access services by spending no more than 1% of their relevant turnover.
- 1.8 Channels that did not meet one or both of these tests would be exempted from access services obligations unless their circumstances changed.
- 1.9 Licensees would need to meet the subtitling and audio description targets set out in Ofcom's Code, rising progressively from 10% for subtitling and 2% for audio description in 2014, to 80% and 10% audio description respectively within ten years. If the cost of meeting these targets in full exceeded 1% of the relevant turnover of a channel, the subtitling targets could be reduced substantially. No change would 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. See paragraph 3.55 onwards.
- 1.10 Some licensees provide subtitling on local-language subtitling intended for all viewers to foreign programming. Under our proposals this so-called 'language' subtitling should count towards access service targets.
- 1.11 For the first two years, it is proposed that special arrangements would apply to signing on most channels, giving channels with audiences shares falling below the signing threshold to choose whether or not to meet their obligations by broadcasting 30 minutes of sign-presented programming each month, proposing alternative arrangements that would contribute towards sign-presented programming, or providing additional subtitling. The purpose of this transitional period, which would run until the end of 2015, would be to allow broadcasters the option of devising alternative arrangements (such as those developed by broadcasters in the UK to pool resources) that offer the prospect of optimising the benefits to sign language users.
- 1.12 If Ofcom was satisfied that it would be impracticable for a channel to provide a particular access service – for example, because the necessary infrastructure or consumer equipment was lacking – the channel concerned would be exempted, although the situation would be kept under review.

Proposed next steps

- 1.13 Interested parties should let us have their comments by **5pm on 11 July 2012**. Ofcom will consider carefully any comments received, as well as any other

information it has gathered or received, before publishing its decisions in a Statement later in the year.

- 1.14 If Ofcom concludes that it should implement the proposals set out in this document, it would expect to publish by the end of the year a list of non-domestic channels required to provide access services. Broadcasters would have 12 months to prepare for this, and would be required to start providing access services no later than 1 January 2014.

Section 2

Background

Non-domestic broadcasters

- 2.1 Ofcom licenses some 400 channels that broadcast television services to locations outside the UK, principally in Europe. Many are operated by large multi-national broadcasters such as Discovery, Turner Broadcasting, Viasat and Disney. A number of these channels are pan-European, showing identical content in all countries, but subtitled or dubbed as appropriate to meet the needs of different language markets. While all contribute to widening the choice for consumers across Europe, some have relatively small audiences.

Statutory provisions

- 2.2 Sections 303 to 308 of the Communications Act 2003 (“the Act”) provide that Ofcom must draw up and from time to time review and revise a code giving guidance as to how applicable television services should promote the understanding and enjoyment of television by people who are deaf or hard of hearing, or blind or partially-sighted, or who have a dual sensory impairment (deafblind)². The Act prescribes quotas for the subtitling (80%), signing (5%) and audio description (10%) of programmes to be reached by the tenth anniversary of the relevant date for each channel, as well as a subtitling quota to be reached by the fifth anniversary (60%).
- 2.3 The Act allows Ofcom to take into account a number of factors in deciding whether particular programmes or entire television programme services should be excluded for the purposes of access service quotas. These factors include ‘the extent to which members of the intended audience for the programmes [included in a television programme service] are resident in places outside of the United Kingdom’, and ‘the technical difficulty of providing the service’.
- 2.4 When devising the present access service scheme, Ofcom did not extend this to non-domestic channels serving other EU states. There were no requirements in European legislation for access services, and relatively few Member States had the means to deliver or receive access services. However, access services are now available in many European countries, and the legislative position has changed with the entry into force of the Audiovisual Media Service Directive.

Audiovisual Media Service Directive

- 2.5 The precursor to the AVMS Directive – known as the ‘Television without Frontiers’ Directive – made no provision in relation to access services. However, Article 7 of the AVMS Directives 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’.
- 2.6 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’. In accordance with Article 2(6), the Directive

² The key sections – section 303 and section 305 – are reproduced in Annex 4.

applies to all audiovisual media services intended for reception in one or more Member States.

- 2.7 In the case of access services, the ‘system of law applicable’ to services intended for the public in the United Kingdom is comprised within sections 303 to 308 of the Act. The Government did not consider 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 is the current arrangements for domestic channels.

Current arrangements for domestic channels

- 2.8 Domestic licensees that have an audience share equating to 0.05%³ must provide access services as long as the assessed cost of doing so represents no more than 1% of the channel’s relevant turnover⁴. Where a number of channels are in common ownership, Ofcom aggregates the relevant turnover for all channels that meet the audience share threshold and considers affordability against average revenues per channel.
- 2.9 In assessing the cost of providing access services, Ofcom uses data obtained from broadcasters in periodic surveys, as well as data they provide each year on the ratio of first run to repeated programming.
- 2.10 As explained in paragraph 7 of the Code, access service obligations rise over time from the first anniversary of the relevant date, as explained in paragraph 5 of the Code. In the case of subtitling, the targets increase from 10% of content to 80% over 10 years; in the case of audio description, from 2% to 10% over 5 years.
- 2.11 As regards signing, channels with an audience share of 1% or more must sign 5% of their content after 10 years, while other channels must schedule 30 minutes of sign-presented programming a month, or secure Ofcom’s consent for alternative arrangements that help to increase the amount of sign-presented programming.
- 2.12 Almost all have chosen to contribute funding to the British Sign Language Broadcasting Trust (BSLBT), which funds sign-presented programming shown on the Community Channel and on its own web-based player⁵. This arrangement has been well received by sign language users, and is preferred by broadcasters to the provision of signed content on their own channels⁶.
- 2.13 Further details are given in Ofcom’s Code on Television Access Services (Annex 2) and the accompanying annexes⁷. The remainder of this document explains how Ofcom proposes to apply a similar approach to determining the access service obligations of non-domestic channels, with minor adjustments.

³ This threshold is a percentage of all minutes watched in the UK over the course of a year, based on data from the BARB viewing panel.

⁴ As defined in Amended Statement on Charging Principles. Ofcom, 20 December 2011

(<http://stakeholders.ofcom.org.uk/binaries/consultations/statement-charging-principles/statement/Statement-final.pdf>)

⁵ <http://www.bslbt.co.uk/programmes/>

⁶ http://stakeholders.ofcom.org.uk/binaries/consultations/access_services/statement/review.pdf

⁷ <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ctas.pdf>

Section 3

Proposed scheme for non-domestic channels

Introduction

3.1 In this section, we set out Ofcom's proposals for:

- a) the criteria that would apply to the selection of non-domestic channels required to provide access services;
- b) the date that broadcasters would be required to start providing access services;
- c) the factors Ofcom would take into account in determining whether or not to grant exemptions on grounds of technical difficulty;
- d) proposed provisions in respect of subtitling, signing and audio description; and
- e) consequential changes to the Code on Television Access Services.

Criteria for selection

3.2 Ofcom proposes to apply the same approach to selecting which non-domestic channels should provide access services, as it does to identifying which domestic channels should do so. In brief, this requires us to identify which channels meet the relevant audience share threshold, and of those, which can meet the affordability test.

Audience share threshold

3.3 Following a consultation in 2004, Ofcom concluded that channels which attract a share of viewing equivalent to 0.05% of more⁸ would provide sufficient benefit to justify requiring them to provide access services (subject to affordability)⁹. The audience share threshold for the UK was adopted on the basis that it was consistent with Parliament's intention that access services should be available across a broad range of services. It also reflected the fact that it would be disproportionate to require channels with comparatively few viewers to provide access services, as the benefits to potential beneficiaries would not be commensurate with the cost¹⁰. We have

⁸ As measured by the British Audience Research Bureau (BARB).

⁹ *Code on Television Access Services - Statement*, July 2004, Ofcom.

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

¹⁰ 'The proposed audience share threshold of 0.05% was based on a judgement about what was appropriate, having regard to the views of Parliament and public expectations arising from debate about the issue during the passage of the Communications Act 2003. Responses to our consultation have reinforced our view that this threshold continues to command general support, that it strikes a reasonable balance and that there are no better arguments pointing to a different level'. *Statement on Code on Television Access Services*, July 2004, Ofcom

(http://stakeholders.ofcom.org.uk/binaries/consultations/tv_access_services/statement/statement.pdf). Subsequent reviews found no reason to alter this conclusion.

reviewed this criterion on two occasions, and concluded that no practicable alternatives have been suggested¹¹.

- 3.4 As in other parts of Europe, the audience share for a channel is measured by reference to its share of the total number of minutes viewed across a calendar year. Thus, a channel described as having an audience share of, say, 2% will account for 2% of all minutes viewed across the year. This translates into an absolute number of minutes viewed. Thus, in 2010, total viewing in the UK as measured by BARB accounted for some 12.8 billion minutes. Channels that achieved a share of this total amounting to 0.05% (e.g. about 6.4 million minutes) or more were required to provide access services in 2011.
- 3.5 We propose to use the absolute number of minutes represented by an audience share of 0.05% in the UK to derive appropriate audience share thresholds for other EU Member States. For this purpose, we would use viewing data taken from standard industry measures for each country¹². Using the absolute number of minutes results in audience share thresholds that mean that channels must meet broadly the same minimum amount of viewing in each country, regardless of whether the population in that country is larger or smaller than the UK. The audience thresholds we have derived for EU Member States are shown in column 1 of the table in Annex 3.
- 3.6 The alternative, of applying a 0.05% threshold to each market, would mean that in countries with relatively small populations, channels serving comparatively few viewers would be obliged to provide access services. This could impose a disproportionate burden on the broadcaster, and risk the withdrawal of that service, to the detriment of viewers in general. By the same token, in countries with larger populations, channels attracting relatively large audiences would be exempted from providing access services, to the detriment of sensory-impaired viewers.
- 3.7 In a few cases, audience share data is not readily available from published sources. In these cases, we shall ask relevant broadcasters who may wish to seek an exemption on audience share grounds to provide evidence that would satisfy Ofcom that the channel(s) in question fall below the audience share threshold. Such evidence might include privately-acquired data on audience share, or subscription numbers equating to those for a channel that was already excluded on audience share grounds. If the evidence indicates that the channel in question has a higher audience share than the threshold for the country in question, the broadcaster would be required to provide access services.

Q1. Do consultees agree with the proposed approach to setting audience share thresholds for other EU Member States? If not, do they have practicable alternatives that they would like to propose, which would be comparable with the approach taken to domestic channels?

¹¹ *Television Access Services Review*, September 2006, Ofcom (<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ars.pdf>) and *Television Access Services Review - Statement*, June 2010, Ofcom (http://stakeholders.ofcom.org.uk/binaries/consultations/access_services/statement/review.pdf)

¹² *One television year in the world*, Mediametrie, 2010 (<http://www.mediametrie.com/eurodatatv/solutions/one-television-year-in-the-world.php?id=57>)

Affordability

3.8 In assessing the affordability of providing access services on non-domestic channels, we propose to adopt the same approach that applies to domestic channels. Thus:

- a) as with domestic licensees, non-domestic licensees that meet the audience share threshold would have to provide access services provided that they can afford to do so by spending no more than 1% of their relevant turnover¹³ (based on annual returns submitted by broadcasters to Ofcom);
- b) as with domestic licensees, 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 country¹⁴ and apply the rules set out in paragraph 22 of the Code on Television Access Services (Annex 2)¹⁵;
- c) as with domestic channels, if the cost of meeting the targets in full is higher than 1% of the relevant turnover of the channel concerned, the subtitling targets would be reduced to Level Two (66% of the target) or Level Three (33%), in accordance with paragraph 19 of the Code. Targets for audio description and signing would be unchanged. Only if the cost of meeting Level Three targets was greater than 1% of relevant turnover would the channel be exempted altogether from access service requirements; and
- d) as with domestic licensees, Ofcom would use data from broadcasters' annual returns to ascertain the balance between first-run and repeat programming, and would assume that content accompanied by access services would be repeated with the same frequency as other material. Thus, if a channel has a subtitling target of 30%, and normally repeats first run programming twice, we would assume that, to meet the target, the broadcaster would only need to pay to subtitle 10% of programming.

3.9 In some cases, broadcasters report relevant turnover on the basis of channels that are sold as bundles. In these cases, it will be necessary to allocate revenue between services that are bundled to arrive at an assessment of the attributable relevant turnover. In doing so, we shall apply the principles set out in Ofcom's current Statement of Charging Principles (see footnote above for link).

¹³ As defined in the Amended Statement on Charging Principles. Ofcom, 20 December 2011 (<http://stakeholders.ofcom.org.uk/binaries/consultations/statement-charging-principles/statement/Statement-final.pdf>)

¹⁴ The application of the 'common ownership' rule is explained in paragraph 22 of the Code on Television Access Services (Annex 2) and the accompanying footnote.

¹⁵ The objective of this exercise is to ensure that as many channels as possible are accompanied by access services, subject to affordability. The first step would be to find the average relevant turnover of the channels in common ownership that meet the relevant audience share threshold. If the assessed cost of providing access services on each channel is no more than 1%, then all the channels would be required to provide access services. However, if the assessed cost exceeded 1% of the average relevant turnover, the next step would be to exclude the channel with the smallest actual relevant turnover and perform the calculation again. If this resulted in a similar outcome, the channel with the next lowest relevant turnover would be excluded, and the exercise repeated until the point was reached when all the assessed cost of providing access services on the remaining channels was no more than 1% of average relevant turnover.

Assessing costs

- 3.10 Ofcom will need to assess relevant costs in order to apply the affordability test described above. In relation to domestic channels providing access services, Ofcom gathers data periodically on how the costs of providing access services in the UK have changed. The outcome of the most recent review was published in late 2009¹⁶.
- 3.11 We take these costs into account in working out how much a broadcaster might be expected to pay to meet a given set of access service targets. This approach is relatively simple, applies equally to each broadcaster, and avoids the moral hazard that might arise if we left it to broadcasters to tell us how much access service provision cost them.
- 3.12 The picture is obviously more complex when there are 26 other EU Member States to consider, but in assessing costs, our starting point is the approach set out in our 2004 Statement¹⁷. This assumed that:
- a) no additional transmission costs would be incurred for subtitling, given the modest capacity requirements and the fact that some broadcasters already provide on a voluntary basis. Ofcom has not been made aware by domestic broadcasters of significant problems with this approach. In this connection, we note that many non-domestic broadcasters already provide some subtitling, which would remove or reduce any additional costs;
 - b) no additional transmission costs would be incurred for audio description. The 2004 Statement set out our assumption that channel providers would be incentivised to use capacity already available to them, using a variety of approaches to free up capacity, including temporary reductions in the amount of capacity allocated to the original video and sound tracks, improvements to coding efficiency, and statistical multiplexing or temporary re-allocations between different channels where this is feasible;
 - c) programming accompanied by access services is repeated as often as other programming. Broadcasters already provide us with data on the amount of first-run programming, and thus, the proportion of their schedule which is populated by repeated programming;
 - d) a reasonable approach to assessing the production costs of access services (e.g. the rate per programme hour) would be to take an average of the range of costs reported by broadcasters; and
 - e) any capital expenditure would be amortised over five years.
- 3.13 Ofcom's provisional view is that it is not appropriate to include the costs of administration and compliance, given that most broadcasters already carry out similar tasks (e.g. awarding and monitoring compliance with contracts to supply language subtitling, acquisition of capacity for new channels).

¹⁶ 2009 Review of Television Access Services

(http://stakeholders.ofcom.org.uk/consultations/access_services/)

¹⁷ Statement on Code on Television Access Services, July 2004, Ofcom

(http://stakeholders.ofcom.org.uk/binaries/consultations/tv_access_services/statement/statement.pdf).

- 3.14 In the light of discussions with broadcasters to clarify the information they have already provided, responses from consultees and consideration of additional information that we may obtain, Ofcom proposes to set out the approach it would take in its statement.

Q2. Do consultees have any comments on whether the approach taken to assessing the costs faced by domestic licensees is also appropriate to non-domestic licensees? If so, what alternatives would they propose, and why?

Provisional assessment for 2013 and 2014

- 3.15 Although Ofcom considers that the data supplied by broadcasters, as clarified in subsequent discussion with Ofcom, would be a good basis for arriving at a provisional assessment of the costs that broadcasters may incur in providing access services, we recognise that even better data will become available once broadcasters have put contracts in place during the course of 2013.
- 3.16 Accordingly, 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.
- 3.17 In the meantime, for a transitional period of two years (from 1 January 2013 to 31 December 2014), we propose to make a provisional assessment of costs to work out the estimated affordability of providing access service costs.
- 3.18 For this purpose, we consider it reasonable to assume that broadcasters would incur any set up costs during 2013, in order that they would be in a position to meet their access service obligations from the beginning of 2014.
- 3.19 Our analysis of the hourly rates quoted by broadcasters suggests that, whether costs are assumed to be at the top, middle or bottom of the range will have comparatively little effect on the number of channels required to provide access services. Accordingly, given that the data from broadcasters (though broadly based) is not comprehensive, and that the provisional arrangements will only be required until the beginning of 2014, we propose to err on the side of caution, and assume costs at the top of the range quoted by broadcasters.
- 3.20 In the light of analysis to date, we anticipate that around 50-60 non-domestic channels would be required to provide access services. Subject to consultation, we would aim to publish a definitive list of these channels required to provide access services from 1 January 2014 by the end of this year. In the meantime, as the assessments remain provisional, we have written separately to individual broadcasters to advise them whether any of their channels may be affected, and if so, which ones.

Q3. Do consultees agree with the proposed approach to determining a provisional assessment of costs for 2013 and 2014?

Longer term arrangements

- 3.21 Although the data supplied by broadcasters has provided a good basis for arriving at a provisional assessment of the costs that broadcasters may incur in providing access services, we recognise that even better data will become available once broadcasters have put contracts in place during the course of 2013.

- 3.22 Accordingly, 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.
- 3.23 As with domestic channels, we would carry out a periodic review of which non-domestic channels should provide access services in the following year, having regard to their audience share and relevant turnover.

Commencement of access services

- 3.24 The Code on Television Access Services provides that access service targets increase by reference to the appropriate anniversary of the 'relevant date', which is defined by section 305(1)(b) of the Communications Act 2003 and explained further in paragraph 5 of the Code.
- 3.25 When access service obligations were extended to domestic channels (other than public service or digital programme service channels), the relevant date was set at the entry into force of the legislation, rather than being backdated to the point at which each of the channels started broadcasting. The legislation set five year targets for subtitling, and ten year targets for subtitling and audio description; it did not mandate interim targets, but provided a power for Ofcom to impose these. It was clear from the debates in Parliament that legislators expected Ofcom to use this power to set interim targets, and the Code duly does this.
- 3.26 The legislation puts non-domestic channels in a different position than domestic channels were at the end of 2003. Domestic channels (other than public service channels that were already providing access services) were given a year's notice from the entry into force of the legislation ('the relevant date') of the requirement to start providing access services, and ten years to reach the full statutory targets. Many non-domestic channels have been broadcasting for a number of years since the relevant date, so would be required to start providing access services at a relatively high level, rather than building up over time. Thus, by 2014, those channels in existence since late 2003 would be required to provide subtitling on 80% of their content, audio description for 10%, and signing for 5%. Ofcom considers that these may be onerous obligations initially in relation to the benefit that viewers would derive. We set out our reasoning below.
- 3.27 Ofcom has considered whether, in principle, there is a case for exempting non-domestic channels from the arrangements set out in section 303, including the commencement of access services from the relevant date (as defined in section 305 – see Annex 4), and imposing equivalent arrangements to start from a different date.
- 3.28 Section 303(8) sets out the factors to which Ofcom must have regard before deciding whether to exclude some or all of the programmes included in a service. These are:
- a) the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes;
 - b) the size of the intended audience for the programmes;
 - c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;

- d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;
 - e) the technical difficulty of providing the assistance; and
 - f) the cost, in the context of the matters mentioned above, of providing the assistance.
- 3.29 In this particular case, Ofcom does not consider that it would be compatible with the UK's obligations under the AVMS Directive to have regard to the extent to which members of the intended audience for a service live outside the UK or other Member States of the European Union, so has concluded that it should not take this factor into account.
- 3.30 Turning to the other factors, it may appear that the extent of the benefit that would be conferred by not exempting channels from the relevant date would be significantly greater than if they were exempted, and a different, later date was applied, as access service targets would be set at a relatively high level. However, take up of access services is likely to be limited in the first few years by the time needed to overcome technical barriers on some networks to making access services available. Use of access services will also be limited by lack of awareness amongst consumers - recent UK experience has shown, for example, that awareness of newer access services such as audio description has grown relatively slowly since it became widely available from 2005. Finally, it is likely to take time for suitable consumer equipment to become commercially available, particularly in the case of audio description. As a result, the extent of the benefit that would be conferred by applying the relevant date is likely to be relatively modest initially.
- 3.31 In most cases, the size of the intended audience for programmes accompanied by access service will be relatively small. Most of the non-domestic channels are niche pay TV services in the countries they serve, where most viewing is to free-to-air domestic channels. As regards the number of persons likely to benefit, Ofcom notes that sensory-impaired viewers will themselves account for a small minority of viewers to these niche channels, and that, for the reasons set out in paragraph 3.30, not all of these would be likely to benefit in the first few years.
- 3.32 Accordingly, as regards the factors set out in paragraph 3.28 (a) to (c) above, the adverse effects of applying a different, later date to the setting of targets seem likely to be relatively modest, and would be partially offset by the fact that many of relevant channels provide language subtitling, and that subtitle users account for a large majority of sensory-impaired viewers.
- 3.33 As regards the technical difficulty of delivering access services, Ofcom has considered representations by broadcasters and accepts that, in a number of cases, it will be necessary to plan for and implement complex processes in order to ensure that access services can be prepared and delivered to end-users (see paragraphs 3.3 to 3.8 above). In general, Ofcom does not consider that the technical difficulties are likely to be insuperable, given that the skills required to deal with them are those used by broadcasters in the normal course of their operations. We recognise that resolving the technical difficulties may take time, but note that affected broadcasters will be given at least 12 months' notice of the need to make appropriate arrangements. Accordingly, Ofcom proposes to take the same approach to considering exemptions on grounds of technical difficulty as it does in relation to domestic channels, as set out in paragraph 10 of the Code.

- 3.34 However, Ofcom recognises that many broadcasters will want to make use of in-country providers of access services, partly because locally-based native speakers will have a better understanding of the languages in which access services are to be provided, and partly because of potential cost advantages. Even where such providers are currently available, broadcasters have indicated that differences in business practices and cultural expectations mean that providers are likely to require a high level of support initially in order to secure an acceptable standard of performance, and that it will take time to build the skills required to serve each market in the most efficient way. Requiring broadcasters to deliver high targets immediately would be likely to increase the difficulties of meeting acceptable standards, compromise quality and raise costs.
- 3.35 Finally, in the light of the factors described above, Ofcom has considered the cost of providing the assistance. While the full costs are unlikely to be clear until contracts for provision and delivery of access services have been let, Ofcom accepts that broadcasters are likely to incur significant start-up costs related to the distribution of access services to end-users, as well as higher costs generally until inefficiencies are driven out of the operational arrangements. Ofcom also accepts that, until experience has been gained, imposing on broadcasters an immediate requirement to reach relatively high targets is likely to make their costs proportionately greater than if they were required to meet those same targets after bedding in their systems. Ofcom's initial view is that the modest benefits we expect in the first few years (see paragraphs 3.30 to 3.32 above) would not warrant the imposition of these additional costs.
- 3.36 Taking all these factors into account, and subject to the outcome of the consultation, Ofcom is minded to exempt non-domestic channels from compliance with the obligations set out in section 303(5). Instead, Ofcom proposes to impose obligations in accordance with section 303 (10)(c) of the Act that would substitute 1 January 2013 ('the notice date') for the relevant date set in accordance with section 305(2). This would mean that, with effect from 1 January 2014, a non-domestic channel obliged to provide access services would be required to subtitle 10% of its content, audio describe 2% of its content, and sign 1% of its content. The table below shows how the targets would change thereafter.
- 3.37 In reaching this view, Ofcom has also had regard to its general duty, in accordance with section 3(3) of the Act, to 'the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed'.

Figure 1: Proposed timing of access service targets for non-domestic channels required to provide access services with effect from January 2014

Anniversary of notice date	Subtitling	Audio description	Signing*¹⁸
First (2014)	10%	2%	1%
Second (2015)	10%	4%	1%
Third (2016)	35%	6%	2%
Fourth (2017)	35%	8%	2%
Fifth (2018)	60%	10%	3%

¹⁸ The signing quotas would apply to channels with larger audience shares. See paragraphs 3.42 to 3.51 for discussion of these and other arrangements.

Sixth (2019)	60%	10%	3%
Seventh (2020)	70%	10%	4%
Eighth (2021)	70%	10%	4%
Ninth (2022)	70%	10%	4%
Tenth (2023)	80%	10%	5%

Q3. Do consultees agree that non-domestic channels required to provide access services with effect from January 2014 should commence provision in accordance with the targets corresponding to the first anniversary of the notice date?

Specific arrangements for subtitling, audio description and signing

- 3.38 Ofcom recognises that circumstances vary across different European markets, and that the provision and distribution of access services may be easier in some markets than others. The Code on Television Access Services allows broadcasters to be exempted from providing one or more access services on grounds of technical difficulty. However the Code also makes clear that ‘television service providers [should] make 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’.
- 3.39 Ofcom’s specific proposals in relation to subtitling, audio description and signing are set out below.

Subtitling

- 3.40 On the basis of the information available to Ofcom, we consider it unlikely that broadcasters would face insurmountable technical difficulties in delivering subtitling in most, if not all, European markets. Many non-domestic channels already provide language subtitling. In addition, some broadcasters provide subtitling for hearing-impaired viewers to meet local requirements.
- 3.41 In the case of channels that provide language subtitling, Ofcom has considered whether it would be appropriate to require relevant channels to provide additional subtitling intended for hearing-impaired viewers which could, for instance, describe sounds that may not be discernible to them. However, given that such subtitling would largely repeat the content of the language subtitling, and would have to be placed in another part of the screen in order to be legible, thus obscuring much of the picture, Ofcom does not think that this would best serve the interests of hearing-impaired viewers. Accordingly, Ofcom proposes to count language subtitling towards any requirement for subtitling to assist hearing-impaired viewers.

Q4. Do consultees agree that Ofcom should count language subtitling towards access service targets for subtitling?

Audio description

- 3.42 Audio description is less common elsewhere in Europe than the UK, but is available (albeit generally in low volumes) in many European countries¹⁹. Some countries may lack the infrastructure and consumer equipment that would make it practicable for

¹⁹ including France, Germany, Italy, Spain, Sweden, Denmark and Portugal.

consumers to benefit from audio description, though it is likely that most will develop the necessary facilities over time.

- 3.43 In addition, in some countries, subscribers to satellite or cable services have the option of choosing from more than one language sound track (for example, enabling viewers to watch a foreign programme dubbed in the local language, or in the original language). It may therefore be feasible to provide audio description to end-users by adding a pre-mix audio description sound track to the choice of those made available, in the same way that Sky was able to make available audio description to UK subscribers without the need to modify equipment.
- 3.44 Broadcasters wishing to seek temporary exemption from an obligation to provide audio description will need to demonstrate to Ofcom's satisfaction that it is not practicable to do so. Reasons might include the absence of any suitable infrastructure capable of adaptation to deliver and receive audio description, the unwillingness of platform providers to provide facilities (for example, in the absence of any or significant obligations placed upon local channels) and, in this context, that the costs of provision would be disproportionate on the basis that they would entail a broadcaster spending more than 1% of relevant turnover on the provision of access services.

Signing

- 3.45 Ofcom's code requires that:
- a) domestic channels with an audience share in the UK of 1% or more are required to meet the targets for signing set out in Code on Television Access Services, rising from 1% from the first anniversary of the relevant date, to 5% from the tenth anniversary; and
 - b) channels with a UK audience share of less than 1% are required to show a 30-minute sign-presented programme once a month, or contribute towards other approved arrangements that promote sign-presented content.
- 3.46 Ofcom has taken these arrangements as the starting point for devising proposals for signing in relation to non-domestic channels.
- 3.47 In the same way that Ofcom has assessed audience share thresholds for different countries that reflect the differing size of their markets (see paragraphs 3.3 to 3.8 above), we have assessed different thresholds ('signing' thresholds) for determining which signing arrangements should apply. These are set out in Annex 3.
- 3.48 On the basis of the information currently available to Ofcom, we consider that all non-domestic channels that might be required to provide access services would fall below the signing thresholds, and would thus be required to comply with the arrangements summarised in paragraph 3.45(b) above. Accordingly, the default regulatory arrangement would be to require channels providing access services to include at least 30 minutes of sign-presented programming in their schedules each month.
- 3.49 Ofcom recognises that, in some circumstances, this may not be practicable. For example, some channels are pan-European content in nature – the same content is made available in each market, with the addition of subtitling or dubbing as appropriate. As sign languages differ from one country to another, this could mean that a pan-European channel would be required to provide sign-presented

programming in the sign language of every country where it met the audience share threshold. Ofcom does not consider that this would be proportionate.

- 3.50 In these circumstances, it may be appropriate for broadcasters to propose alternative arrangements that promote the availability of sign-language programming. In the UK, broadcasters used this flexibility to work with deaf groups to create the British Sign Language Broadcasting Trust (BSLBT), which funds sign-presented programming shown on the Community Channel and on its own web-based player²⁰.
- 3.51 Although it took some time to put in place, this arrangement has been well received by sign language users, and is preferred by broadcasters to the provision of signed content on their own channels²¹. It has allowed sign language users to find signed programming at consistent times on one channel, rather than having to search for hard-to-find programming across many other channels. It has also allowed deaf production companies to produce a wide range of culturally-relevant programming.
- 3.52 While similar arrangements might be beneficial to sign-language users elsewhere in Europe, it is likely that they would take some time to put in place. In the meantime, Ofcom is concerned that obliging non-domestic broadcasters to make arrangements now for sign-presented content on their own channels could prejudice the opportunity to devise arrangements that would better suit the needs of sign language users.
- 3.53 For these reasons, Ofcom proposes to require broadcasters with an audience share below the relevant signing threshold (Annex 3) 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.
- 3.54 As many (but not all) sign language users in the UK also make use of subtitling, Ofcom considers that option (c) is likely to benefit many sign language users elsewhere in Europe. However, we accept that not all sign language users (for whom signing is often their first language) will find subtitling easy to use, and would welcome views on this proposal.

Q5. Do consultees agree 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?

²⁰ <http://www.bslbt.co.uk/programmes/>. The overall objective of both the regulatory arrangements and alternative arrangements in relation to signed content is to increase the provision of sign-presented programming made available to sign language users, as research and consultation showed that they prefer this to sign-interpreted content.

²¹ http://stakeholders.ofcom.org.uk/binaries/consultations/access_services/statement/review.pdf

Impact on viewers and broadcasters

- 3.55 From the extensive discussions Ofcom has had with organisations representing the interests of sensory-impaired television viewers in the UK, it is clear that access services on domestic channels are greatly valued by those who rely upon them to understand and enjoy television.
- 3.56 We have no reason to believe that sensory-impaired viewers in other parts of Europe think differently; indeed, the European Disability Forum has provided guidance to its members (disability bodies in Europe) on how best to persuade governments transposing the AVMS Directive to require broader accessibility to audiovisual media services. We believe that sensory-impaired viewers will welcome more accessible television; indeed, they may well advocate faster progress.
- 3.57 Ofcom is under a duty to ensure that any regulatory burdens it imposes on broadcasters are proportionate. As is the case for domestic channels, we propose to achieve this by restricting the requirement to provide access services to those channels that meet the relevant audience share threshold, and that can afford to meet the assessed costs by paying no more than 1% of their relevant turnover.
- 3.58 In addition, where a broadcaster cannot afford to meet a channel's access service targets in full (Level 1) by spending no more than 1% of its relevant turnover, its subtitling target may be reduced by one third (Level 2) or two thirds (Level 3). Channels that cannot afford to meet Level 3 requirements are exempt altogether.
- 3.59 We have applied this approach to domestic channels for several years, and it has allowed regulation to respond flexibly to changing circumstances. For example, where the audience share for specific channels has fallen below the threshold, we have exempted them from providing access services. Where a channel's relevant turnover has declined significantly, we have reduced their obligations, or (if necessary) removed them altogether. It is noteworthy that, although paragraph 29 of the Code allows Ofcom to reduce, suspend or terminate access service obligations if a licensee can demonstrate to Ofcom's satisfaction that continuation of access service obligations would threaten the viability of its service, Ofcom has not been asked to consider such a case.

Consequential changes to the Code

- 3.60 Annex 3 shows the Code on Television Access Services, marked up to show the consequential changes that would be made if, following consultation, Ofcom decides to implement the proposals set out in this document.
- 3.61 Two further changes are proposed:
- a) equalities legislation has changed since the Code was published, so we propose to take this opportunity to clarify (in paragraph 35 of the Code) that broadcasters should have regard to their obligations under equalities legislation in general, rather than the Disability Discrimination Act 1995 alone; and
 - b) the reporting interval was altered in 2010 to once every six months, rather than once a quarter, so we propose to alter paragraph 36 to bring the Code into line with current practice.

Q6. Do consultees have any comments on the proposed changes to the Code on Television Access Services, as set out in Annex 2?

Annex 1

Responding to this consultation

Introduction

A1.1 This Annex sets out Ofcom's consultation principles and processes, and explains how to respond to this consultation. Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 11 July 2012**.

Ofcom's consultation principles

A1.2 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A1.3 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A1.4 We will be clear about who we are consulting, why, on what questions and for how long.

A1.5 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A1.6 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A1.7 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A1.8 If we are not able to follow one of these principles, we will explain why.

After the consultation

A1.9 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

- A1.10 Ofcom seeks to ensure that responding to a consultation is easy as possible. If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.11 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

How to respond

- A1.12 We strongly prefer to receive responses via the online web form which incorporates the coversheet shown at the end of this Annex. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A1.13 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A1.14 For larger consultation responses - particularly those with supporting charts, tables or other data - please email rowan.armstrong@ofcom.org.uk attaching your response in Microsoft Word format, together with the coversheet.
- A1.15 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.
- A1.16 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Rowan Armstrong
5th Floor
Content Policy Team
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3806

- A1.17 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A1.18 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

The issues

- A1.19 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 11 July 2012**. It would be helpful if your response could include direct answers to the questions asked in this document, which are listed below. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

- Q1. *Do consultees agree with the proposed approach to setting audience share thresholds for other EU Member States? If not, do they have practicable alternatives that they would like to propose, which would be comparable with the approach taken to domestic channels?*
- Q2. *Do consultees have any comments on whether the approach taken to assessing the costs faced by domestic licensees is also appropriate to non-domestic licensees? If so, what alternatives would they propose, and why?*
- Q3. *Do consultees have any comments on how it is proposed to assess the cost of providing access services, including the provisional assessment of costs?*
- Q4. *Do consultees agree that non-domestic channels required to provide access services with effect from January 2014 should be permitted to commence provision in accordance with the targets corresponding to the first anniversary of the notice date?*
- Q5. *Do consultees agree that Ofcom should count language subtitling towards access service targets for subtitling?*
- Q6. *Do consultees agree 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?*
- Q7. *Do consultees have any comments on the proposed changes to the Code on Television Access Services, as set out in Annex 3?*
- Q8. *Do consultees have any comments on the impact assessment (Annex 2)?*

- A1.20 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Rowan Armstrong at rowan.armstrong@ofcom.org.uk.

Publication of responses

- A1.21 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.22 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.23 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.24 Following the end of the consultation period, Ofcom intends to publish a statement in October 2012.
- A1.25 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Consultation response cover sheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing Name/contact details/job title	<input type="checkbox"/>		<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

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

DECLARATION

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

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

Name

Signed (if hard copy)

Annex 2

Proposed revisions to Ofcom's Code on Television Access Services

[proposed additions are underlined; proposed deletions are scored through. In the event that the Code is amended along the lines proposed, paragraphs will be renumbered as appropriate]

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 as recorded by the nationally-recognised body for this purpose;
- (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 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 programmes²² 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 below²³.

Anniversary of relevant date²⁴	Subtitling	Signing	Audio Description
First	10%	1%	2%
Second			

²² 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.

²³ 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/>.

²⁴ Or such date as Ofcom may determine, as explained in paragraph 5.

	10%	1%	4%
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 threshold. The audience share threshold for:

- 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:

- a) domestic television services achieving 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.

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 month²⁵. 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 Appendix 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 year²⁶.

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

²⁵ Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

²⁶ 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.

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'²⁷. Only broadcasters unable to afford Level Three costs will be exempt from provision altogether on grounds of cost.

²⁷ As defined in Ofcom's Statement of Charging Principles, 8 February 2005. (www.ofcom.org.uk/consult/condocs/socp/main/?a=87101).

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 ownership²⁸, 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

25. 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

26. 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.

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

²⁸ 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.

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

36. Broadcasters to whom this code applies:

- a) 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
- 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

37. This code is subject to periodic review.

Annex 3

Audience share and signing thresholds in other EU Member States

The table below sets out the audience share thresholds and signing thresholds that Ofcom proposes to apply, as explained in section 3 of the consultation document, in determining:

- (a) in respect of the audience share threshold, which channels should provide access services (subject to affordability); and
- (b) in respect of the signing thresholds, the channels with audience shares above the threshold which would be required to meet their obligations by selecting one of the options described in paragraph 3.37.

Country	Audience share threshold	Signing threshold
Austria	0.56%	11.28%
Belgium	0.36%	7.15%
Bulgaria	0.40%	8.00%
Cyprus	3.76%	* ²⁹
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	6.18%	96.60%

²⁹ Where an asterisk appears instead of a signing threshold, this indicates that the nominal threshold would exceed 100% of total viewing.

Proposals for access services on non-domestic channels

Malta	7.34%	*
Netherland	0.19%	4.62%
Poland	0.08%	1.48%
Portugal	0.30%	6.48%
Romania	0.14%	2.40%
Slovakia	0.56%	13.24%
Slovenia	1.46%	36.20%
Spain	0.06%	1.29%
Sweden	0.32%	8.69%

Annex 4

Extracts from the Communications Act 2003

Section 303 - Code relating to provision for the deaf and visually impaired

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

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

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

of the programmes to be included in such services; and

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

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

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

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

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

- (a) is a service to which this section applies, and
 - (b) has a relevant date after the passing of this Act,
- as consists of programmes that are not excluded programmes must be accompanied by subtitling.

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

(a) that at least 90 per cent. of so much of a Channel 3 service or of Channel 4 as consists of programmes that are not excluded programmes must be accompanied by subtitling;

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

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

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

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

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

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

(a) the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes;

(b) the size of the intended audience for the programmes;

(c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;

(d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;

(e) the technical difficulty of providing the assistance; and

(f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.

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

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

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

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

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

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

(12) This section applies to the following services—

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

(13) In this section—

“electronic programme guide” means a service which—

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

“programme” does not include an advertisement.

Section 305 - Meaning of “relevant date” in s. 303

(1) In relation to a service, the relevant date for the purposes of section 303 is—

(a) in a case to which any of subsections (2) to (4) applies, the date given by that subsection; and

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

(2) In the case of a service the provision of which began before the television transfer date but which is not—

(a) a service provided by the Welsh Authority,

(b) a licensed public service channel, or

(c) a digital television programme service,

the relevant date is the date of the coming into force of this section.

(3) In the case of—

(a) a Channel 3 service the provision of which began before the date of the passing of this Act, and

(b) Channel 4 and S4C Digital,

the relevant date is 1st January 2000.

(4) In the case of Channel 5, so far as it consists of a service the provision of which began before the date of the passing of this Act, the relevant date is 1st January 1998.

(5) OFCOM may determine that a service provided by a person is to be treated for the purposes of section 303 and this section as a continuation of a service previously provided by him.