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# **Review of Ofcom’s Code on Television Access Services and Guidance on BBC Accessibility**

Consultation on the code of guidance to be applied to the BBC, and non-material revisions to Ofcom’s Code on Television Access Services

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[Review of Ofcom’s Code on Television Access Services and Guidance on BBC Accessibility](#) – Welsh overview

## **CONSULTATION:**

Publication date: 20 November 2019

Closing date for responses: 15 January 2020

# Contents

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## Section

1. Overview	1
2. Background to BBC Access Requirements	3
3. Which services should the BBC make accessible?	6
4. How should the BBC make its television services accessible?	9
5. Proposed changes to Ofcom's Code on Television Access Services	13

## Annex

A1. 2016 and 2006 BBC Agreements	16
A2. Equality Impact Assessment	19
A3. Responding to this consultation	21
A4. Ofcom's consultation principles	24
A5. Consultation coversheet	25
A6. Consultation questions	26
A7. Proposed revisions to TV Access Services Code	27
A8. Proposed revisions to TV Access Services Code (clean version)	28
A9. Existing Code on TV Access Services	29

# 1. Overview

Ofcom's Code on Television Access Services includes guidance which must be observed by the BBC in relation to providing access services (subtitles, audio description and signing) on its television channels. In line with the BBC's Royal Charter and Agreement 2016, Ofcom is now reviewing how the BBC should make its UK Public Services accessible. At the same time, we are consulting on changes to improve the clarity of our Code on Television Access Services for all broadcasters.

## **What we are proposing – in brief**

### **We propose to maintain the existing targets for BBC television channels included in Ofcom's Code on Television Access Services ('the TV Access Code')**

This means the BBC should continue to provide: subtitling on 100% of its programming, audio description on 10% and signing on 5%.

To ensure the targets remain proportionate, the TV Access Code also sets out guidance on how channels may be excluded from the targets, or subject to alternative requirements. We consider the current guidance on exclusions should continue to apply to BBC television channels.

### **We propose to consider guidance on the accessibility of BBC iPlayer separately**

In December 2018, we made recommendations to Government on drafting regulations to improve the accessibility of regulated video on-demand programme services ("ODPS").<sup>1</sup> The regulations will be complemented by an Ofcom code of guidance setting out how ODPS providers should meet the requirements ("the On-Demand Code"). We propose to consult on our proposed guidance for inclusion in the On-Demand Code and our proposed guidance for the BBC's ODPS (including iPlayer) at the same time.

### **We also propose to make some changes to the layout and wording of the TV Access Code to make it more user-friendly for broadcasters and access service users**

This was needed following amendments to the Code in recent years which have made it harder to follow. As part of these changes, we propose to move our best practice guidelines ("Guidelines on the provision of television access services") into a separate document. This reflects how these guidelines are different in nature from the rest of the Code, focused on ensuring the quality and usability of access services. We plan to consult on revisions to these guidelines in due course.

## **What's next?**

- 1.1 We invite comments on the proposals set out in this document by no later than 5pm on 15 January 2019.

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<sup>1</sup> On 5 November 2019, Government wrote to Ofcom requesting that we conduct a further consultation to provide additional detail in relation to the regulations. At the time of writing we are preparing this consultation.

## Review of Code on Television Access Services and BBC Accessibility

- 1.2 Following our review of stakeholder responses, we plan to issue a statement and as appropriate a revised Code in Spring 2020, which will come into immediate effect.
- 1.3 We are proposing to consult on relevant guidance for the BBC's UK ODPS separately in due course.

## 2. Background to BBC Access Requirements

- 2.1 In this section, we set out the background to our review of the guidance on accessibility which must be observed by the BBC.

### Current arrangements

- 2.2 Currently, the BBC is required to observe Ofcom’s Code on Television Access Services (“TV Access Code”)<sup>2</sup> as modified in accordance with Clause 59 of the 2006 BBC Agreement<sup>3</sup>. This arrangement has remained in force until such time as Ofcom issues a new Code<sup>4</sup>. We have maintained this arrangement until now as we believe it continues to provide good levels of accessibility. The BBC regularly meets or exceeds existing targets for its UK Public Television Services (see para 4.8-4.9) and has also made significant progress in making its on-demand services (such as iPlayer) accessible (see para 3.6).
- 2.3 Under the existing framework, the TV Access Code applies in relation to the BBC’s UK Public Television Services only<sup>5</sup> and sets out 10-year targets in relation to subtitling (100%)<sup>6</sup>, audio description (10%) and signing (5%) as well as the relevant exclusion and alternative arrangement criteria which apply. In addition to the Code targets, the BBC (along with three other broadcasters) has also made a voluntary commitment to audio describe at least 20% of content on the majority of its channels.

### 2016 BBC Charter and Agreement

- 2.4 The 2016 Agreement requires the BBC to observe Ofcom guidance in relation to access services on all its UK Public Services (see Annex 1). This is a broader range of services than under the 2006 Agreement and now includes the UK ODPS<sup>7</sup> and BBC radio programme services. The BBC must observe any such Ofcom guidance in relation to all programmes included in these services, including programmes in UK Public Services that are made available online. This part of the Agreement does not cover content other than

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<sup>2</sup> See sections 303-305 of the Act, which require Ofcom to draw up a code giving guidance as to the extent to which television services licensed under Part 1 of the Broadcasting Act 1990 or Part 1 of the Broadcasting Act 1996 should promote the understanding and enjoyment of programmes by people with sight and/or hearing impairment and to give guidance on the means by which such understanding and enjoyment should be promoted

<sup>3</sup> Clause 59 (reproduced in Annex 1) sets out that the BBC must observe the TV Access Code with certain specified modifications which need to be read in conjunction with Sections 303-305 of the Act

<sup>4</sup> See Annex 1 for clause 5, part 3, Schedule 4 of the [2016 BBC Agreement](#)

<sup>5</sup> The 2006 Agreement defines ‘UK Public Television Services’ as ‘those UK Public services which consist of television programme services’. The BBC is not currently required to observe any guidance on the accessibility of its other services, including its ODPS, such as BBC iPlayer

<sup>6</sup> The 100% subtitling target was formalised to reflect a commitment from the BBC to go beyond the 90% target required under the 2006 Agreement

<sup>7</sup> The 2016 Agreement defines UK On Demand Programmes Services as ‘those UK public services the principal purpose of which is the provision of programmes comparable in form and content to programmes normally included in television and radio programme services, and access to which is on demand’

‘programmes’ included in the UK Public Services (e.g. visual layout of the BBC news website).

2.5 The 2016 Agreement also gives Ofcom greater flexibility in relation to determining what (if any) guidance it sets, including deciding whether to revise or even remove existing targets under the TV Access Code. The Agreement does not specify in which code or codes any such guidance should be included.

2.6 In sections 3 and 4 we consider the scope of future Ofcom guidance in relation to the accessibility of the UK Public Services and set out our proposals, taking into account the wider legal framework of:

- The BBC’s Mission - to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain<sup>8</sup>
- The BBC’s Public Purposes, which include, in summary:
  - Public Purpose 1: To provide impartial news and information to help people understand and engage with the world around them
  - Public Purpose 2: To support learning for people of all ages
  - Public Purpose 3: To show the most creative, highest quality and distinctive output and services
  - Public Purpose 4: To reflect, represent and serve the diverse communities of all of the United Kingdom’s nations and regions and, in doing so, support the creative economy across the United Kingdom.<sup>9</sup>
- Ofcom’s obligation under Schedule 2 of the 2016 Agreement in setting the Operating Licence for the BBC to have particular regard to the need for the BBC to secure the provision of distinctive output and services, including in terms of the range of audiences served.<sup>10</sup>

2.7 On 24 October 2019, we published our second Annual Report on the BBC which includes our assessment of the BBC’s performance in delivering its Mission and Public Purposes.<sup>11</sup> We report on how the BBC has met the regulatory conditions in the Operating Licence along with how it has performed more broadly against its Mission and Public Purposes.

2.8 Before drawing up the BBC code of accessibility, Ofcom must consult the BBC and those who represent the interests of people with sight and/ or hearing impairment.<sup>12</sup> Accordingly, we are inviting interested parties to respond to the proposals set out in

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<sup>8</sup> See Clause 5 of the [2016 BBC Royal Charter](#)

<sup>9</sup> See Clause 6 of the [2016 BBC Royal Charter](#). Note: the BBC’s fifth Public Purpose to reflect the United Kingdom, its culture and values to the world is outside of Ofcom regulatory role. It lies with the BBC to set the licence for the BBC World Service (clause 32 of the Agreement)

<sup>10</sup> See Clause 1-2, Schedule 2 of the [2016 Agreement](#)

<sup>11</sup> See Ofcom’s second [Annual Report](#) on the BBC

<sup>12</sup> See Clause 9(4), Schedule 3 of the 2016 Agreement (A1)

this document. Separately, we are also taking the opportunity to consult stakeholders on our proposed modifications to the TV Access Code. These are set out in Section 5.

## Impact Assessment and Equality Impact Assessment

2.9 Sections 3 and 4 of this document constitute an impact assessment as defined in section 7 of the Communications Act 2003 (the “Act”). Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making.<sup>13</sup> We also assess the impact of our proposals on specified equality groups in an ‘Equality Impact Assessment’ in Annex 2.

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<sup>13</sup> For further information about Ofcom’s approach to impact assessments see our guidelines, [Better policy-making: Ofcom's approach to impact assessment](#)

## 3. Which services should the BBC make accessible?

- 3.1 As explained in Section 2, the 2016 Agreement enables Ofcom to apply accessibility guidance in relation to programming included in the BBC's UK Public Services. This includes the BBC's UK Public Television Services, radio programme services, and UK On Demand Programme Services ("ODPS").

### Television services

- 3.2 Much progress has been made in the accessibility of broadcast television services and the BBC continues to be a model of good practice in this area<sup>14</sup>.
- 3.3 We have considered whether the guidance relating to the BBC's television services (or television and other UK public services) should be set out in a new code, separate from the current TV Access Code. However, as explained in Section 4, we do not consider that there should be a strong differentiation between the guidance relating to BBC television channels and the guidance relating to other UK television channels to which the TV Access Code applies. Setting out the relevant guidance for all UK television services in one code aids clarity for industry and for consumers and has been well-established over the last 10 years.
- 3.4 We therefore consider it would be appropriate to continue to include relevant guidance in relation to the BBC's UK Public Television Services in the existing TV Access Code. Section 4 sets out in detail Ofcom's proposed guidance for the BBC's UK Public Television Services in the TV Access Code.

### Radio services

- 3.5 We have considered whether to introduce guidance on the accessibility of BBC radio services. These services are by their nature accessible to blind and partially sighted people, but not to people with hearing loss. There are currently no requirements for access service provision in relation to UK radio services. There have been some US projects<sup>15</sup> to provide programme subtitles on radio, which are then viewed via websites or specific models of radio receiver. However, there is limited precedent for such a service and we do not believe there is a clear consensus on how these measures would work with the technology currently available. We therefore do not propose to introduce guidance for BBC radio services for the foreseeable future.

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<sup>14</sup> For example, see our latest [TV Access Services Report](#)

<sup>15</sup> For instance, see information on projects in this area on the [NPR's website](#) and on [Verb8tm's website](#)

## On-demand programme services

- 3.6 The BBC has made significant progress in making its ODPS accessible; providing subtitles on 76.5% of programme hours on iPlayer, audio description on 15.8% and signing on 4.7% in 2018/19. On the five main BBC broadcast channels on iPlayer, 100% of content is subtitled, 20% audio described and 5% signed.<sup>16</sup>
- 3.7 Given that the accessibility of on demand programme services in general is a key concern for the relevant consumers<sup>17</sup>, and that on-demand viewing is increasing in popularity<sup>18</sup>, we believe that it is appropriate to introduce guidance on the accessibility of BBC ODPS (such as iPlayer).
- 3.8 However, setting relevant guidance on the accessibility of on-demand services involves a set of separate and distinct policy challenges to ensure a proportionate approach (for example, in relation to the technical challenges of providing access services across certain third-party platforms)
- 3.9 Ofcom has been considering such issues in relation to ODPS regulated under Part 4A of the Act and our [recommendations](#) to Government on drafting regulations to improve the accessibility of such services<sup>19</sup>. Subject to regulations being made by Government, Ofcom anticipates consulting on a separate code giving guidance to such ODPS providers on meeting the new legislative requirements (“the On-Demand Code”). Consistent with this, we propose that it would be most appropriate to consult on the relevant guidance in relation to BBC ODPS at the same time as we consult on the wider On-Demand Code.

## Online services

- 3.10 As stated in Section 2, the relevant part of the Agreement only covers ‘programmes’ included in the UK Public Services. It does not cover other content such as text or short-form video clips on BBC websites.
- 3.11 However, the revised European AVMS Directive, due to be transposed into national legislations by EU member states by September 2020,<sup>20</sup> revises the definition of a ‘programme’ to include video clips. Therefore, we will consider in future whether it would

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<sup>16</sup> See p.160 of the BBC’s [Annual Report 2018/19](#). These figures relate to all platforms on which iPlayer is available with the exception of subtitles, where they relate to the platforms on which the BBC offers subtitles. The BBC has informed us that there are two platforms on which it cannot currently offer subtitles, by exception, for technical reasons; these are the catch-up service on Sky and the Apple TV device. The BBC has informed us that it is continually looking for ways to resolve those exceptions

<sup>17</sup> As detailed in our recommendations on accessibility [regulations for ODPS](#)

<sup>18</sup> For example, the proportion of adults who watch any on-demand service increased from 53% in 2018 to 58% in 2019. See QH77 in Ofcom’s Technology Tracker [2018](#) and [2019](#)

<sup>19</sup> See Ofcom’s recommendations on accessibility [regulations for ODPS](#). The recommendations proposed that Government should consider excluding the BBC from the regulations for ODPS in line with the fact that broadcast accessibility requirements for the BBC derive from the BBC Agreement rather than the Act – see paragraph 3.19 of the recommendations

<sup>20</sup> The revised Audiovisual Media Service Directive regulations need to be implemented by EU member states by 19 September 2020

be appropriate to include any requirements in relation to BBC short form video clips online.

Question 1: Do you agree with our proposal to continue to apply guidance to BBC UK Public Television services, and not to introduce guidance for the BBC's radio programme services for the foreseeable future?

Question 2: Do you agree with our proposal to consider relevant guidance in relation to the BBC's UK ODPS separately?

## 4. How should the BBC make its television services accessible?

- 4.1 This section considers how we should apply the TV Access Code to BBC UK Public Television Services in relation to subtitling, audio description and subtitling targets and exclusions, and the guidance on promoting awareness.
- 4.2 We aim to hold the BBC to account in making its television services accessible, while allowing it flexibility in how it maximises accessibility across its UK Public Services. This is consistent with the BBC's Public Purposes which include serving the diverse communities of the UK and providing high-quality output which sets the standard in the UK and internationally<sup>21</sup>.
- 4.3 Therefore in making these proposals we have considered the extent to which the BBC meets or exceeds its current targets, and also the role of the BBC in carrying out research and development work to improve the accessibility of its programming more broadly, including in relation to the quality of access services, and the usability of the platforms by which they are delivered<sup>22</sup>.

### Targets

- 4.4 As explained in Section 2, the BBC must currently observe 10-year targets to provide subtitling on 100% of its programming, audio description on 10%, and signing on 5%, on its television channels which are not excluded. The BBC has consistently proven it is able to meet these targets.
- 4.5 Ofcom has considered whether to require the BBC to instead observe 'softer' guidance under the 2016 Agreement. For example, we could set out guidance that the BBC should publish a plan each year on how it intends to make its TV programmes accessible over the coming year. However, we consider that the Code targets bring clarity to consumers about the minimum levels of accessibility that the BBC, and other broadcasters, are required to achieve.<sup>23</sup> We recognise that television access services are of vital importance to the relevant consumers, and that television content remains the most popular form of viewing, especially among older audiences<sup>24</sup>, who are also more likely to have a visual or hearing impairment.<sup>25</sup> We therefore consider it appropriate that the BBC continues to observe

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<sup>21</sup> See Clause 6(3) and 6(4) of the 2016 BBC Royal Charter

<sup>22</sup> For further information, see the BBC's Research and Development website. The BBC also publishes best practice guidelines, including in relation to [subtitling](#) and the accessibility of [web and mobile platforms](#)

<sup>23</sup> Our Access Services Report set out how all broadcasters have performed against the targets, assisting consumers in selecting services

<sup>24</sup> More than two-thirds of total viewing of video content in 2018 was to broadcast content. In 2018, 65-74s watched an average of 5 hours, 33 minutes of broadcast TV per day, and 75+s watched an average of 5 hours, 49 minutes. This compares to 3 hours, 18 minutes among all individuals (4+). See [Media Nations 2019](#) pages 17 and 20

<sup>25</sup> An estimated one in five people aged over 75 have sight loss ( See the RNIB's [Key Information and Statistics](#)) and more than seven in ten people over 70 live with hearing loss ( See Action on Hearing Loss' [Facts and Figures](#))

targets, and, at a minimum, to be subject to the current levels. In relation to subtitling under the TV Access Code, the BBC is currently subject to the highest subtitling target of all broadcasters (100%). We propose to maintain this target at the maximum level.

- 4.6 In relation to audio description, the BBC is subject to a 10% target but has voluntarily committed to audio describe 20% of its programming, which it has done without regulatory intervention. Moreover, the BBC has consistently exceeded this target since 2014. For instance, in 2018 the BBC provided audio description on 22% - 42% of its programming on channels subject to the Code targets.<sup>26</sup> It has also been providing audio description (28%)<sup>27</sup> on BBC Scotland since its launch in early 2019, even though BBC Scotland has not yet reached the point at which it is subject to the targets in the Code. On this evidence, Ofcom is confident that the BBC will continue to meet its voluntary commitment, including in relation to any future services. By over-providing against its existing targets, we consider that the BBC sets a leading example for other broadcasters. We therefore propose to maintain the existing 10% target and not to formalise the voluntary arrangement by introducing a higher target. However, we will continue to monitor the BBC's provision and are able to reconsider the target levels in future if needed.
- 4.7 In relation to signing, the BBC is already meeting the highest level of target (5%) that applies to any broadcast channel under the TV Access Code. In practice, in 2018, it provided signing on 5.2% to 6.5% of programming on the required channels.<sup>28</sup> We also recognise that signed programming is more expensive to provide than audio description and subtitling, and therefore do not consider it proportionate to set a higher signing target at this time. We consider this the best way to ensure that the BBC is able to balance its regulatory commitments with innovation in the field of accessibility, and thereby set the standard for other broadcasters across a range of services and platforms.
- 4.8 We therefore propose to maintain the BBC's current access service targets while expecting the BBC to continue to exceed these levels where possible.

## Exclusions

- 4.9 The TV Access Code contains guidance on how channels can be excluded from the targets or subject to alternative requirements<sup>29</sup>, and three BBC channels are currently subject to exclusions. BBC Parliament and BBC Alba are excluded entirely from the targets as they have an average audience share of less than 0.05%<sup>30</sup>. BBC News is excluded from the audio description target due to the technical difficulty, and more limited audience benefit, of provision on its live news channel where there is little space within the dialogue/soundtrack to add audio description.

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<sup>26</sup> See our latest [TV Access Services Report](#)

<sup>27</sup> See p.160 of the BBC's [Annual Report 2018/19](#)

<sup>28</sup> See p.160 of the BBC's [Annual Report 2018/19](#)

<sup>29</sup> See paras 15-25 of the TV Access Services Code (Annex 9)

<sup>30</sup> See paras 16-24 of the TV Access Services Code (Annex 9) for more information on how Ofcom excludes channels from the statutory requirements on grounds of audience share

- 4.10 We considered whether we should set a higher bar for applying exemptions to BBC channels. For instance, we considered whether to lower the audience share threshold by which channels are excluded (currently 0.05%) or to not apply exemptions on technical grounds.
- 4.11 However, we aim to allow the BBC flexibility to direct its resources to those programmes and services which maximise accessibility for the widest possible audience. We consider it proportionate that the BBC is not required to provide audio description on its News Channel. We also recognise that the BBC provides some access services on a voluntary basis for its excluded services. For example, in 2018/19 it subtitled 18.6% of programming on BBC Parliament and 100% of programming on BBC Scotland<sup>31</sup>
- 4.12 Our existing guidance on excluding services has worked effectively for over ten years in ensuring the proportionality of the requirements. As technical exemptions are considered on a case by case basis, the guidance has flexibility to take account of relevant technical developments, including in relation to future BBC services.
- 4.13 Therefore, we consider that our guidance on exclusions should continue to apply to the BBC, as appropriate, while expecting that it will continue to provide access services voluntarily, taking account of the likely benefit to audiences.

## Promoting awareness

- 4.14 The TV Access Services Code sets out requirements for broadcasters in relation to promoting awareness of their access services, including to provide information to electronic programme guide (EPG) operators on which programmes are accompanied by access services, and to provide similar information on their websites.<sup>32</sup> EPG Providers have a corresponding obligation to include such information in their EPGs, with both parties required to use standard acronyms for subtitling (S), audio description (AD) and signing (SL). This guidance aims to ensure a consistent approach across industry, and provide clarity for consumers.
- 4.15 The Code also sets out our expectation for television services to publicise awareness of their access services through other means, including periodic on-air announcements and information in publications. The BBC takes steps in this regard; for example, in August 2018, along with six other broadcasters, it launched an advertising campaign to increase awareness of audio description.<sup>33</sup>
- 4.16 Ofcom is aware that access services are of limited use if they cannot be found by the relevant consumers and considers this guidance should continue to apply to the BBC.

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<sup>31</sup> See p.160 of the BBC's [Annual Report 2018/19](#)

<sup>32</sup> See the Promotion of Awareness Section (para 39 and 40) of the TV Access Services Code (Annex 9)

<sup>33</sup> See further information on the [RNIB's website](#)

## Modifications to the TV Access Code

- 4.17 For the above reasons, we are not proposing to make any changes to the relevant guidance in relation to BBC television services. Nevertheless, we need to amend some of the wording of the TV Access Code to update references and terminology in line with the 2016 Agreement. We explain this further below and our proposed modifications are set out in red text in Annex 7, [published alongside this document](#).
- 4.18 In summary, we are proposing to modify the TV Access Code as follows:
- To set out the relevant provisions of the 2016 Agreement in the Legal Background section (see para 1.11 -1.12) and explain that the TV Access Code includes relevant guidance in relation to the BBC's UK Public Television Services which must be observed by the BBC.
  - To make clear in the Targets Section that the BBC has the same audio description (80%) and signing (5%) targets as other broadcasters, and a higher subtitling target (100%) under the 2016 Agreement. See para 1.15
  - To make clear in para 1.24 that the guidance on exclusions and alternative requirements applies to the BBC's UK Public Television Channels where applicable.

Question 3: Do you agree with our approach to maintain the existing targets and guidance for the BBC's UK Public Television Services?

Question 4: Do you agree with the proposed modifications of the TV Access Code set out in Annex 3 to ensure it applies to BBC UK Public Television Services under the 2016 Agreement?

Question 5: Do you have any other comments regarding our proposals in relation to how the BBC should make its UK Public Services accessible under the 2016 Agreement?

## 5. Proposed changes to Ofcom’s Code on Television Access Services

- 5.1 In addition to the BBC changes outlined above, we are proposing to make some changes to the wording and structure of the TV Access Code to improve its clarity. We do not consider these changes involve any substantive changes to the Code.
- 5.2 The changes are set out in Annex 7, [published alongside this document](#). Proposed additions to the Code are set out in underlined red text and highlighted (e.g. **example**), and deletions are marked in strike-through and highlighted (e.g. ~~example~~). We have re-ordered some sections of the Code but this is not highlighted, for reasons of readability.
- 5.3 Annex 7 is not fully accessible, including to those using screen readers. However, we have also published [the existing Code](#) (Annex 9) and a [clean version of our proposed revised Code](#) (Annex 8).
- 5.4 Below, we set out key proposed changes to the code:
- Publish Annex 4 of the existing Code (Guidelines on the provision of television access services) as a separate document. This reflects how these guidelines are different in nature from the rest of the Code: focusing on how broadcasters should ensure the quality and usability of access services, rather than on how to meet the statutory requirements in relation to the amount of accessible programming. We are planning to consult on revisions to our guidelines in due course, including to expand them to include guidance for ODPS providers.<sup>34</sup> We also plan to remove two paragraphs from the existing Code (relating to equal opportunities legislation and to seeking advice from disability groups) and include relevant guidance instead in the separate guidelines.
  - Clearly explain that the Code applies to relevant television services regardless of the means of delivery, e.g. that it includes services delivered online (See para 1.2). Broadcasters are able to request exemptions on technical grounds if they are unable to meet the targets across all delivery platforms (see Technical Difficulty section).
  - Explain (in para 1.10) the legal basis for the requirements in relation to providing information on the availability of access services (see Promoting Awareness section).
  - Use one term (“applicable date”) throughout the Code to refer to the date which determines when access service obligations commence. In para 1.13, we explain which dates are applicable, according to whether the service is domestic or non-domestic, the date on which the service commenced and whether the service is a PSB channel.
  - Explain more clearly that broadcasters may meet the statutory signing targets through either *sign-interpretation* or *sign-presentation* (see Table 1) and that broadcasters of channels with smaller audience shares - who do not wish to meet the alternative

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<sup>34</sup> In our recommendations on [regulations for ODPS](#), we recommended that ODPS providers have to report annually to Ofcom on measures taken to ensure the quality and usability of their access services, and that Ofcom will produce guidance in this area.

requirements for sign-presented programming - may propose alternative arrangements to Ofcom.

- Move the alternative signing requirements for applicable channels from the 'Targets' section into the 'Exclusions and Alternative Requirements' section. Also, to move the substitute signing arrangements in relation to additional subtitling or sign-interpretation into Annex 3 to clarify that applicable non-domestic channels need to submit proposals if they wish to meet these alternative requirements.
- Clarify the arrangements for reviewing audience share to reflect current practice, removing redundant paragraphs (1.54 and 1.55).
- Clarify the arrangements for informing broadcasters of their requirements, to reflect current practice. We aim to inform broadcasters of the outcome of our mid-year review by 31 June each year (currently stated as 31 May). We also clarify that broadcasters who wish to do so should apply for alternative signing arrangements by 31 July (currently stated as 31 June) and that Ofcom will aim to decide whether to accept the arrangements by 31 August (currently stated as 31 July). See the Process for determining requirements section.
- Add that broadcasters should aim to request exemptions on technical grounds as early in the year as possible and by no later than 1 September of the relevant year (see Process for determining requirements section). This is to allow Ofcom time to consider whether to apply technical exemptions for the following calendar year.
- Move the targets for PSB channels from Annex 1 into the 'Targets' section of the main document. This makes clearer that the interim targets are also applicable for the PSB channels.
- Clarify that Ofcom updates the audience share and signing thresholds in Annex 2 on an annual basis to ensure that the thresholds for non-domestic services represent an equivalent number of viewers to the thresholds for domestic services.
- Update Annex 2 on an annual basis so that it includes the inflation-adjusted minimum contributions to alternative signing arrangements. As set out in our 2015 and 2016 Statements<sup>35</sup>, Ofcom adjusts the contribution levels each year for inflation, and separately publishes the inflation-adjusted contributions for the following year on our website<sup>36</sup>. At the same time as publishing the contributions on our website, we propose to now also update Annex 2 with the applicable figures. For clarity, we do not plan to include contributions levels for previous years, but these will be available for reference on request.

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<sup>35</sup> See our 2015 [statement](#) in relation to domestic channels, and [2016 statement](#) in relation to non-domestic channels

<sup>36</sup> Ofcom publishes the [minimum contribution levels](#) on our website, as the same time as publishing the [list of channels required to publish access services](#) in the following year.

Question 6: Do you have any comments on our proposed changes to Ofcom's Code on Television Access Services?

Question 7: Do you have any comments on our proposed amendments to the guidance in relation to the dates by which broadcasters should apply to Ofcom for alternative signing arrangements, and request exemptions on technical grounds?

## A1. 2016 and 2006 BBC Agreements

### 2016 Agreement – Clause 9, Schedule 3

#### 9. Code relating to provision for the hearing and visually impaired

(1) The BBC must, in providing the UK Public Services, observe a code drawn up by Ofcom, giving guidance as to-

(a) the extent to which the UK Public Services should promote the understanding and enjoyment by-

(i) persons who are hearing impaired;

(ii) persons who are visually impaired; 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 the BBC ensures that adequate information about the assistance for disabled people that is provided in relation to the UK Public Services is made available to those who are likely to want to make use of it.

(3) Before drawing up the code, Ofcom must consult-

(a) such persons appearing to them to represent the interests of persons falling within subparagraph (1)(a)(i), (ii) or (iii) of that section as Ofcom think fit; and

(b) the BBC.

(4) Ofcom must publish the code in such manner, having regard to the need to make the code accessible to-

(a) persons who are hearing impaired;

(b) persons who are visually impaired, and

(c) persons with a dual sensory impairment,

they consider appropriate.

### 2016 Agreement – Clause 5, Schedule 4

(3) Ofcom's Code on Television Access Services provided for under clause 59 of the 2006 Agreement continues to apply to the BBC under clause 59 of the 2006 Agreement until Ofcom issues a new code.

## 2006 Agreement – para 59

### **59. Code relating to provision for the deaf and visually impaired**

(1) The starting point is that the BBC must, in providing the UK Public Television Services, observe the Code maintained by Ofcom under section 303 of the Communications Act 2003 (referred to in this clause as “the Act”). That is a code relating to provision for the deaf and visually impaired. The Code applies to some other broadcasters by virtue of statutory provisions, but would not apply to the provision of the UK Public Television Services by the BBC but for this clause.

(2) However, we intend that the Code should apply in a modified way. The rest of this clause

explains those modifications. These need to be read in conjunction with the detail of the Act, particularly section 303. The modifications apply only for the purpose of applying the Code, by virtue of this clause, to the provision of the UK Public Television Services by the BBC.

(3) The Code shall, as a general rule, apply separately to the provision of each of the UK Public Television Services by the BBC in the same way that it applies to the provision of Channel 4 by the Channel Four Television Corporation (but see paragraphs (4) and (7)).

(4) However, the Code shall have effect as if the excluded programmes were those agreed for

the purposes of this clause instead of those applicable to Channel 4. “Excluded programmes” are the descriptions of programmes set out in the Code under section 303(7) of the Act. (Excluded programmes play an important role – see in particular section 303(4) to (9) of the Act.)

(5) In agreeing the excluded programmes, the parties must have regard, in particular, to the

matters set out in paragraphs (a) to (f) of section 308(8) of the Act.

(6) The exclusions that may be agreed—

(a) may include different descriptions of programmes in relation to different UK Public Television Services; and

(b) in the case of a UK Public Television Service which the parties are satisfied (having regard to the matters mentioned in paragraph (5) above) is a special case, may include all the programmes included in the service.

(7) The Code shall have effect as if the relevant date in relation to any of the UK Public Television Services were that fixed by paragraph (8) instead of the relevant date applicable to Channel 4. (The concept of “the relevant date”, which plays a role in section 303 of the Act, is defined by section 305.)

(8) The relevant date is—

(a) in the case of BBC One and BBC Two, 1st January 1997; and

32

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

(9) The parties must agree whether a service is to be treated for the purpose of paragraph (8)(b) as a continuation of a service previously provided by the BBC rather than as a new service.

(10) Before agreeing anything for the purposes of this clause, the parties must consult such

persons appearing to them to represent the interests of persons falling within section 303(1)(a)(i), (ii) or (iii) of the Act as they think fit.

(11) The BBC must publish anything agreed for the purposes of this clause in such manner as

it considers appropriate, having regard to the need to make what has been agreed accessible to—

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

(b) persons who are blind or partially sighted.

(12) This clause must be interpreted in accordance with, and have effect subject to, clause 92,

which explains such things as “agreed” and “the parties”, and how the process of reaching agreement should work.

(13) In this clause, references to the Code and section 303 of the Act must be interpreted having regard to clause 60.

## A2. Equality Impact Assessment

- A2.1 Ofcom is required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation<sup>37</sup>. We refer to groups of people with these protected characteristics as ‘equality groups’.
- A2.2 We fulfil these obligations by carrying out an Equality Impact Assessment (“EIA”), which examines the impact our policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.
- A2.3 We have not considered it necessary to carry out separate EIAs in relation to the additional equality groups in Northern Ireland: political opinion and dependents. This is because we anticipate that our proposals would not have a differential impact in Northern Ireland compared to consumers in general.

### Equality Impact Assessment

- A2.4 We consider that our proposals may have greater implications for the following equality groups:
- a) people with disabilities
  - b) people whose age-related conditions may make them more vulnerable (who we consider under the protected characteristic of ‘age’)<sup>38</sup>
  - c) people belonging to these or other equality groups to the extent that those people use access services for reasons other than sight or hearing impairment.
- A2.5 We consider that our proposals to require the BBC to continue to observe our TV Access Code in relation to its television services is likely to have a neutral impact on the relevant equality groups. The TV Access Code sets out the minimum requirements for the BBC broadcast channels, which in practice the BBC regularly exceeds (see paras 4.8-4.9). We do not consider that our proposals will in any way hinder the BBC from continuing to exceed the Code requirements, increasing the benefits of access service provision to the relevant equality groups.
- A2.6 We consider that our proposed revisions to the TV Access Code (see para 4.20) are unlikely to have any impact on the relevant equality groups. We do not consider that they involve any substantive changes to the requirements for UK broadcasters in relation to access service provision. However, we expect that our proposals may improve the clarity of the

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<sup>37</sup> As defined in the Equality Act 2010

<sup>38</sup> People with sight and/or hearing impairment also tend to be older. An estimated one in five people aged over 75 have sight loss (see RNIB’s [Key Information and Statistics](#)), and more than seven in ten people over 70 live with hearing loss (see Action on Hearing Loss’ [Facts and Figures](#))

Code for broadcasters and users of access services, assisting understanding of the requirements.

## Conclusion

A2.7 Overall, we do not consider that our proposals are likely to have a detrimental impact on any of the relevant equality groups, including people with disabilities and older people.

Question 8: Do you agree with our assessment of the impact of our proposals on the relevant equality groups? If not, please explain why you do not agree.

## A3. Responding to this consultation

### How to respond

- A3.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 15 January 2020.
- A3.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/review-code-television-access-services>. You can return this by email or post to the address provided in the response form.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [bbcaccessibility@ofcom.org.uk](mailto:bbcaccessibility@ofcom.org.uk), as an attachment in Microsoft Word format, together with the [cover sheet](#). This email address is for this consultation only, and will not be valid after 15 January 2020.
- A3.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- BBC Accessibility Consultation  
Standards and Audience Protection  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A3.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
  - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A3.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential).
- A3.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A3.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A3.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 6. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A3.10 If you want to discuss the issues and questions raised in this consultation, please email: [bbcaccessibility@ofcom.org.uk](mailto:bbcaccessibility@ofcom.org.uk)

## Confidentiality

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

## Next steps

- A3.15 Following this consultation period, Ofcom plans to publish a statement in Spring 2020.
- A3.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

## Ofcom's consultation processes

- A3.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 4.
- A3.18 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

## A4. Ofcom's consultation principles

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

#### Before the consultation

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

#### During the consultation

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

#### After the consultation

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

## A5. Consultation coversheet

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

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

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? \_\_\_\_\_

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

### DECLARATION

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

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

Name

Signed (if hard copy)

## A6. Consultation questions

Question 1: Do you agree with our proposal to continue to apply guidance to BBC UK Public Television services, and not to introduce guidance for the BBC's radio programme services for the foreseeable future?

Question 2: Do you agree with our proposal to consider relevant guidance in relation to the BBC's UK ODPS separately?

Question 3: Do you agree with our approach to maintain the existing targets and guidance for the BBC's UK Public Television Services?

Question 4: Do you agree with the proposed modifications of the TV Access Code set out in Annex 3 to ensure it applies to BBC UK Public Television Services under the 2016 Agreement?

Question 5: Do you have any other comments regarding our proposals in relation to how the BBC should make its UK Public Services accessible under the 2016 Agreement?

Question 6: Do you have any comments on our proposed changes to Ofcom's Code on Television Access Services?

Question 7: Do you have any comments on our proposed amendments to the guidance in relation to the dates by which broadcasters should apply to Ofcom for alternative signing arrangements, and request exemptions on technical grounds?

Question 8: Do you agree with our assessment of the impact of our proposals on the relevant equality groups? If not, then please explain why you do not agree.

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.

## A7. Proposed revisions to TV Access Services Code

- A7.1 This annex has been [published separately](#). The document is not fully accessible, including to those using screen readers. However, we have also published a clean version of the TV Access Services Code at Annex 8 and the existing Code at Annex 9.

## A8. Proposed revisions to TV Access Services Code (clean version)

A8.1 This annex has been [published separately](#).

## A9. Existing Code on TV Access Services

A9.1 This annex has been [published separately](#).