Making on-demand services accessible

Further consultation to inform requirements to make On Demand Programme Services more accessible to those with sight and/or hearing difficulties

Contents

1.   Overview

Catch-up and on-demand services are increasingly popular, but these services are often not accessible to people with hearing and sight impairments, because they don't provide features like subtitles, audio description and signing.

In 2018, Ofcom made recommendations to Government on new regulations to improve the accessibility of regulated video on-demand services ("ODPS"). Following a formal request from Government, we are now consulting on additional detail, looking at how the regulations should work in practice including who should be exempt.

Background

In 2018 we made recommendations to Government on new rules for regulated catch-up and on-demand services ("ODPS"). We recommended 4-year targets for subtitling (80%), audio description (10%) and signing (5%) on ODPS, with flexible exemptions where these requirements would be too costly, where there would be limited benefit to audiences, or where there are significant technical difficulties in making content accessible. Government has now asked us for more detail to inform its drafting of the regulations, in relation to how the rules should work in practice.

What we are proposing

In this consultation, we set out our initial views on how the regulatory scheme should work and our proposals for more detailed recommendations on the signing requirements.

Making Proportionate Exemptions

We think that the regulations should be flexible wherever possible to apply now and in future to the developing and diverse on-demand industry. Within this context, and based on current information, we propose that the regulations should set out the following exemptions from ODPS access services obligations:

- Exemption based on affordability: this would apply to any ODPS provider which qualifies as a "small company" under the Companies Act 2006 or when the cost of meeting requirements exceeds 1% of provider turnover.
- Exemption based on audience benefit: this would apply to ODPS services on platforms which receive fewer than 200,000 unique visitors on average per month (0.4% of UK online individuals).
- Exemption based on technical difficulty: this would apply in relation to any ODPS provider that can demonstrate it has made "reasonable endeavours" to provide access services on third-party platforms but has been unsuccessful.

Signing Requirements

We propose that all ODPS providers should have a **choice between providing 5% sign-interpretation, and/or a smaller amount of sign-presentation and/ or a financial contribution to an approved provider of sign-presented programming on-demand**. In making this choice, providers would need to provide evidence to Ofcom of how they have had regard to our best practice guidelines for providing signing on ODPS. We plan to consult on revisions to our existing best practice guidelines on television access services in due course, expanding them to include guidance for ODPS providers. To inform this work, we are planning to conduct a survey among BSL users on their preferences for different forms of signing. See Signing

Targets, Implementation and Enforcement

We think the regulations should require access services to be distributed equally among all non-exempt platforms on which a given ODPS is available. Ofcom would assess which target levels are applicable for each provider (making use of information they provide to us) and publish its determination in advance of each calendar year. Certain exemptions should be assessed at the end of the year where necessary. See Implementation

What's next?

1.1   We invite comments on the proposals set out in this document by no later than 5pm on 16 September 2020.

1.2   Following our review of stakeholder responses, we plan to issue a statement of recommendations in autumn 2020

1.3   This overview outlines our key proposals. For more detail on each point, follow the links above to the relevant sections of the consultation

2. Background and our approach

Background

2.1   Ofcom regulates On-Demand Programme Services ("ODPS")[1] under the Communications Act 2003 (as amended) ("the Act"). ODPS include a wide range of services, such as public service broadcasters' catch-up services (like ITV Hub), subscription services (like Amazon Prime Video), and "adult" websites.[2]

2.2   Broadcast television channels are obliged by law to provide subtitling, audio description and signing ("access services") on a certain proportion of their programmes. Requirements are set out in Ofcom's Code on Television Access Services (the "broadcast accessibility Code").

2.3   However, there are currently no statutory requirements for access services on ODPS[3], and the accessibility of such services lags behind that of broadcast television (see our latest access service report). On-demand services are available across a large range of platforms and devices, and accessibility varies greatly depending on the platform used to view the on-demand service.

Digital Economy Act

2.4   The Digital Economy Act 2017 ("DEA") amends the Act, enabling the Secretary of State to make regulations requiring ODPS providers to ensure that their services are accessible to people with sight and/ or hearing impairments. Ofcom is to draw up a code giving guidance to providers on meeting the requirements (the "On-Demand Accessibility Code"). See Annex 1 for the new provisions in s.368BC of the Act, as introduced by s.93 of the DEA.

2.5   The DEA amendments require the Secretary of State to ask Ofcom to consult stakeholders likely to be affected before making any regulations in this area.

Ofcom's 2018 Recommendations

2.6   Following a formal request from the Secretary of State, Ofcom consulted publicly on the form of the regulations, and then made recommendations to Government in December 2018. We recommended 4-year targets for subtitling, audio description and signing (80%, 10%, 5%) on ODPS programming, with a flexible system of exemptions on the grounds of audience benefit, affordability and technical difficulty.

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[1] Whether an on-demand service is regulated by Ofcom depends on a number of factors including whether it includes 'television-like' content and whether it is within UK jurisdiction. See our guidance on who needs to notify.
[2] See the list of notified ODPS services.
[3] Although Ofcom does have a duty under section 368(C) of the Act to "encourage" ODPS providers to ensure their services are progressively made more accessible.

2.7 Given the developing nature of the on-demand industry, we recommended that the methods by which factors such as audience benefit and affordability are assessed should be set out in Ofcom's Code (and subject to change as appropriate, for example as new standards develop for measuring audiences).

Further Consultation

2.8 In November 2019, Government wrote to Ofcom stating that the Secretary of State broadly agreed with Ofcom's recommendations, but in developing the legal framework required further detail on some of the key parameters of the scheme to understand how it should operate in practice. On behalf of the Secretary of State, Government requested Ofcom to carry out a targeted consultation to inform further recommendations on specific thresholds which would determine exemptions from requirements or require a provider to establish alternative requirements.

Our approach to consulting

2.9 Our aim remains to inform effective, proportionate and targeted regulations which bring measurable progress in on-demand accessibility. The forthcoming regulations will set a minimum standard only, and we strongly encourage on-demand providers to increase their provision of access services whenever and wherever it is proportionate to do so.

2.10 This consultation should be read in conjunction with our 2018 Recommendations to Government. We continue to believe that the regulations should be flexible wherever possible to allow maximum scope for the regulatory regime to adapt as necessary. However, through this further consultation we aim for a comprehensive picture of how the on-demand accessibility regulations should work in practice. It will then be up to Government to determine which elements are included in legislation.

2.11 In developing our consultation proposals, we have considered stakeholder responses to our original consultation, and sought initial views from ODPS providers and charities representing access service users.

2.12 We have also taken account of responses to a voluntary request sent to members of the Television On-Demand Industry Forum ("TODIF", an industry-led group open to all regulated ODPS providers) in October 2019. The request was for confidential information in relation to their ODPS on available metrics for assessing audience size and on 'relevant' turnover (i.e. turnover derived from their on-demand service). We received 8 confidential responses.

Impact Assessment and Equality Impact Asssessment

2.13 This document as a whole constitutes 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. [4]

2.14   Annex 2 sets out the assumptions we have made in assessing the impact of different 'affordability' thresholds. Following responses to this consultation, we will update our impact assessment with any additional information we gather to inform our recommendations to Government.

2.15   We also assess the impact of our proposals on specified equality groups in an 'Equality Impact Assessment' in Annex 3.

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[4] For further information about Ofcom's approach to impact assessments see our guidelines, Better policy-making: Ofcom's approach to impact assessment

3. Making Proportionate Exemptions

3.1   In our 2018 recommendations, we said that the regulations should set out the grounds on which programmes or services will be excluded from the requirements, or subject to reduced or alternative requirements. We recommended that these grounds include:

a) The extent of benefit (both quantitative and qualitative) to disabled people, including size of the intended audience;

b) The cost of providing the required assistance, relative to the provider's ability to pay; and

c) Technical or operational difficulty.

3.2   We said that exemptions should take into account the complexity of the on-demand industry and the variety of routes through which ODPS are delivered. ODPS can be provided on platforms over which ODPS providers are likely to have greater control (e.g. their own brand websites / mobile apps / apps on TV platforms like YouView) and/or "third-party" platforms over which the ODPS providers have less control (e.g. Sky on-demand, Amazon Prime Video). These third-party platforms can themselves be distributed across a variety of further platforms/ devices (e.g. Sky Go is available via various platforms, including mobile apps/ apps on Xbox and PlayStation). See Diagram 1.

Diagram 1: Availability of on-demand services
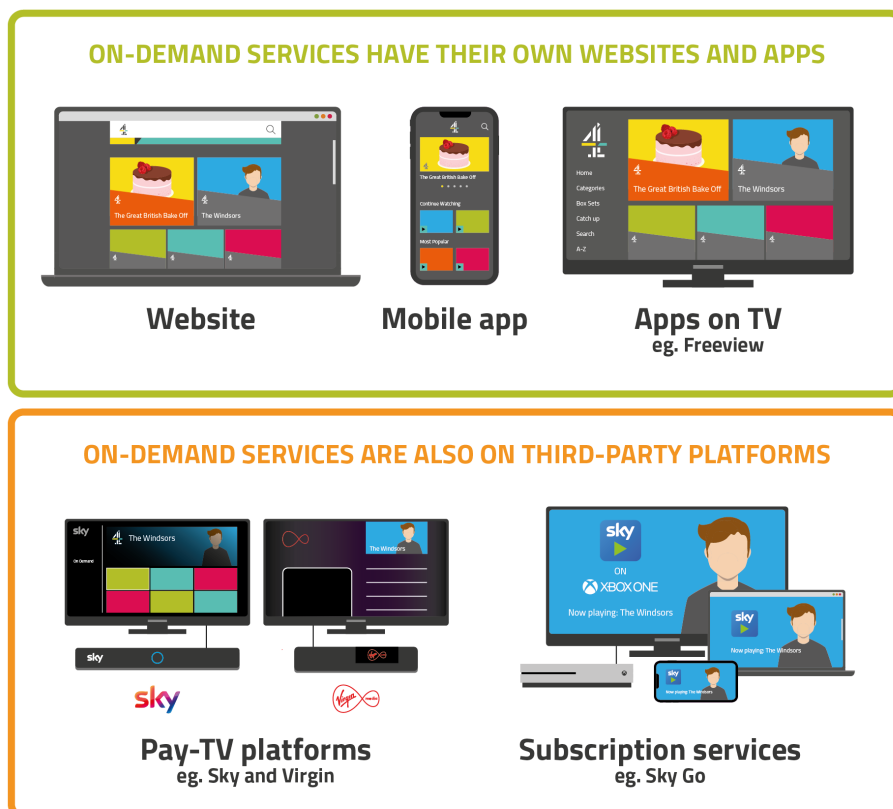
3.3 Despite this complexity, we believe that any requirements and exemptions should be relatively simple to implement, relying on principles which can be clearly understood by industry and consumers alike. In this section, we set out our initial view on how we could assess proportionate exemptions from requirements on grounds of affordability, audience benefit, and technical difficulty.

Affordability

3.4 Our 2018 recommendation was that services should be excluded from the full requirements where the service provider cannot afford them. How should this be measured and assessed in practice?

Issues for consideration

Ability to pay

3.5 Affordability needs to be assessed with reference to some measure of a providers' ability to pay; for example, turnover or profit. Some ODPS providers have suggested that exemptions should be based on platform-specific *profit*: they argue that costs of providing access services might otherwise lead them to remove content from platforms or be discouraged from expanding to new platforms.

3.6 However, profit arguably does not always reflect a provider's ability to invest in access services. For example, some large subscription video on-demand services such as Amazon Prime and Netflix[5] may have low or negative profit margins[6] .

3.7 [Regulatory fees] paid by ODPS providers are currently calculated on the basis of *overall provider turnover*, which is an easily available measure. However, in cases where the on-demand service constitutes a small part of a provider's business, some ODPS providers say that *"relevant" turnover*, i.e. relating to provision of the on-demand service, may be a more proportionate measure.

3.8 As explained in 2.13, we asked ToDif members whether they could provide us with information on a confidential basis on the relevant turnover for their ODPS. Responses to this request and conversations with providers suggest that "relevant" turnover can be difficult to identify for some providers; for example, when services are sold to consumers as part of a bundle in subscription deals with linear channels.

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[5] For clarity, Netflix is used as an example here, but does not currently have an ODPS regulated by Ofcom.
[6] See a 2019 [report] by Frontier Economics for Ofcom (p.67) which states that Amazon Prime TV is a loss leader to reduce customer churn in its retail business, and Netflix is in a period of targeting customer growth over profit. Netflix and Amazon do not split out the costs and margins associated with their UK activities.

Costs

3.9   The assumptions we make about costs are set out in Annex 2 to this document. We make use of confidential costs from industry for providing subtitles/audio description/signing per hour and for setting up access service capability on each platform[7] through which the ODPS services are delivered (an estimated £200,000 per platform amortized over a five-year period, the 'useful life' of the set-up costs).

3.10   Our current understanding is that providers are likely to incur additional costs to set up access service capability on each platform on which they are available: including third-party platforms to which they pass content (such as Sky On-Demand/ Amazon Prime), and various platforms under their own control, for instance, their own apps on different TV platforms (e.g. apps on Apple TV/ Amazon Fire TV/ Freeview Play[8]). However, our understanding is that providers do not generally incur significant additional costs in relation to each end platform/ device by which ODPS are delivered to consumers (for instance, in relation to each smart TV model on which an app is available).

Ofcom's Current View

Ability to pay

3.11   We propose that the threshold for exemptions should be based on overall turnover. We think this reflects ability to pay, particularly for larger providers. We do not think that profit is an adequate measure of ability to pay, for example for those prioritising growth over profit. The starting assumption should be that ODPS providers invest in access services when developing their service offering, as far as it is proportionate. Larger companies who provide a small ODPS service should be protected from disproportionate costs by audience size exemptions (see Audience Size below).

3.12   We think there should be an initial exemption for any ODPS provider which qualifies as a 'small company' under the Companies Act 2006, and therefore is likely to have a turnover of less than 10.2m.[9] This approach ensures certainty and proportionality for the "long-tail" of small ODPS providers (such as YouTube channels and local TV catch up services), while capturing large providers offering the majority of on-demand content. We estimate that

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[7] For the purposes of our cost estimates, we have assumed there are additional set-up costs for each 'platform' for which we received data from providers in our 2018 data report.

[8] We note that apps vary in the extent to which they involve set-up costs across different platforms. For example, it may be possible to run an HTML5 app across different platforms whereas native apps are platform-specific. For the purposes of our estimated costs we have assumed that providing accessibility on apps across different platforms incurs additional expense. This is to take an upper estimate of costs and avoid a situation where our estimates of costs involve disproportionate investigation and analysis.

[9] To qualify as a small company under section 382 of the Companies Act 2006, a company must meet at least two of the following conditions: annual turnover must be not more than £10.2 million; the balance sheet total must be not more than £5.1 million; and the average number of employees must be not more than 50. See guidance on the Government's website for qualifying as a small company

around 34 providers (27% of all ODPS providers) are likely to be above this threshold, but that these entities provide almost 80% of the total content across ODPS. [10]

3.13   For ODPS providers who are not "small companies", our initial view is that providers should be exempt from the requirements (or subject to lower targets) when the cost of meeting the requirements exceeds **1% of their overall turnover**. Based on our initial analysis (see below), we think that this threshold will lead to measurable progress in the amount of accessible content on ODPS and therefore substantial benefits to consumers, while avoiding disproportionate costs to providers.

Costs

3.14   Using the cost assumptions outlined in Annex 2, we have tested the threshold against our estimated costs for ODPS providers to meet the 4-year targets.

3.15   Our early analysis suggests that (of those providers who are not 'small companies') 18 ODPS providers would be able to afford the 4-year targets, from a starting point of zero provision, within this threshold, and 10 ODPS providers would be exempt entirely from requirements. [11] The suggested threshold is broadly in line with our estimate of average current spend (0.6% of turnover) by four ODPS providers who are already providing good levels of accessibility.

3.16   However, we have taken a generally conservative approach to estimating likely costs, meaning these cost estimates are an upper bound, and also expect some platforms to be excluded from requirements on ground of audience size and technical difficulty (see below). Therefore, in practice we expect the costs of provision to be significantly lower and that more providers would be subject to some level of requirement. As outlined in the 'implementation' section below (5.19-5.22) we also expect in practice to be able to take into account where actual costs are lower; for example the lower costs year-on-year as accessible content is retained/archived on a service (rather than replaced by new content for which new access services need to be created/repurposed).

3.17   Following responses to this consultation, we will update our impact assessment to inform our recommendations to Government.

3.18   To this end, we welcome information from providers on the costs of providing access services, including in relation to the various platforms by which services are delivered, and also set out below some more specific questions.

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[10] This was estimated with reference to ODPS providers required to pay fees to Ofcom in 2020 (i.e. who are not a "small company") and information on catalogue size submitted by providers for our 2018 Access Services Data report. However, there are several ODPS providers for whom we did not receive data on catalogue size for our 2018 report.
[11] There are several ODPS providers for whom we did not receive data on catalogue size in our 2018 data report and so are not included in these calculations.

Consultation questions:

Question 1: Do you agree with our suggested approach to assessing exemptions for affordability, i.e. using overall turnover?

Question 2: Do you agree with our suggestion that 'small companies' should be exempted from the requirements?

Question 3: Do you agree that a threshold level of 1% for the remaining ODPS providers is proportionate?

The following questions are applicable to ODPS providers only:

Question 4: Can you provide any information on the costs of providing access services, including in relation to the various platforms by which services are delivered?

Question 5: Can you provide any information on the proportion of your ODPS catalogue which is replaced over a given month/ year (rather than archived)?

Question 6: If you have a broadcast television service, can you provide any information on the proportion of your ODPS catalogue which is repurposed from broadcast television over a given month/ year?

Question 7: If you have more than one ODPS, can you provide any information on the hours of unique content provided across all your ODPS over a given year?

Question 8: Can you provide any information on how much advertising/ subscription revenue you would expect to gain from providing access services on your content?

Question 9: If you have provided answers for any of Qs 4-8 above, would you be happy for Ofcom to share this information with Government on a confidential basis, for the purpose of their impact assessment to inform the drafting of regulations?

Audience size

3.19   Our 2018 recommendation was that providers should be subject to the requirements only if they reach a sufficiently large audience on a given platform. We also said that in the absence of an industry-standard measurement for on-demand audience figures, ODPS providers may be able to self-report audience figures.

Issues for consideration

3.20   As outlined in our 2018 statement (see 3.36) there is no comprehensive industry standard measurement for ODPS audiences, compared with Barb figures on broadcast television viewing.

3.21   It is also our understanding that different ODPS business models (e.g. subscription vs. advertiser-funded) lend themselves to different ways of measuring audiences.

3.22   In addition, ODPS appear across a variety of platforms, including platforms which are to various degrees under the ODPS provider's control and wholly third-party platforms (See Diagram 1). Some platforms (in particular, third party platforms) may not pass back audience figures to the service provider.

3.23   ODPS may be more or less popular on different platforms. For example, a youth-oriented ODPS may be more popular on its website version, where an ODPS aimed at an older demographic may be more popular when watched via a connected television.

3.24   As explained in 2.13, we asked members of ToDiF for information, on a confidential basis, relating to the audience measurements they could obtain in relation to their ODPS, particular those that could be applied at the level of individual platforms to which the service is delivered. We gave a number of suggested metrics as follows:

a)   Time spent / mins per day

b)   Paying subscribers

c)   Unique customers / accounts used for acquisition

d)   Unique visitors (monthly average)

e)   Initiations of downloads / streaming

3.25   Eight ODPS providers with a range of business models responded, and "unique visitors" was the most commonly used metric, by 6 of 8 providers

Ofcom's current view

3.26   It may be preferable to express any threshold in terms relative to the potential visitors to a service, (i.e. an audience 'share' as is used in relation to the broadcast accessibility requirements). Despite the fact that a limited number of ODPS are available without internet connection[12], we believe the potential visitors to an ODPS are best represented by the total UK online population[13]

3.27   We recognise that some ODPS may be aimed at particular audiences (e.g. children or speakers of a specific minority language), which to some extent limits the potential audience size. We have considered whether there is a practical way to define potential visitors differently in relation to different services, and thereby increase the likelihood that more 'niche' services are made accessible to those with disabilities. This may be thought particularly important where sight/hearing impairment intersects with another protected characteristic (e.g. age or race). However, we believe that by prejudging the potential audience of a given service we would be adding unworkable complexity to the assessment process and risk implying that defining the potential audience size of such a 'niche' service is amenable to a straightforward calculation. We note in any case that this approach is

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[12] E.g. Sky's 'push' VOD services
[13] With reference to established online measurement providers such as ComScore. At time of writing this population is 50.2m users aged 6+.

unlikely to make a difference in practice as the majority of specialist interest ODPS are likely to be excluded anyway from the regulations on affordability grounds.

3.28   Using 'unique visitors', we looked at what the appropriate threshold would be for excluding ODPS from requirements. In making this assessment, we looked at:

a) The threshold which applies for exemptions from the broadcast accessibility requirements (0.05% UK audience share- this is measured as 0.05% minutes viewed compared with the total UK household minutes viewed over a 12-month period).

b) The effects of a given threshold on particular services – does it give 'common sense' outcomes which do not exclude popular services or include very small niche services?

3.29   We calculate [14] that the 0.05% broadcast TV threshold in terms of "minutes viewed" (as a proportion of minutes viewed on all channels) can be used to create an equivalent threshold for ODPS services where the level of viewing in minutes viewed is comparable to the broadcast TV threshold. This threshold would be **monthly average unique visitors of 200,000**, which represents a proportion of **0.4% UK online individuals**. Taking the four providers for whom we received data on unique visitors, this threshold would capture the two larger catch-up services (on their more popular platforms), while excluding the two smaller specialist VOD services.

3.30   We note that if this threshold is specified in legislation, there should also be recognition that 'equivalent' thresholds may need to apply in relation to non-domestic services i.e. ODPS that are not available to UK audiences.

3.31   In cases where self-reporting of 'unique visitors' is not available, we believe that the legislation should allow for 'equivalent' measures to be self-reported or estimated by Ofcom using available data (e.g. Barb). For example, our preliminary investigations suggest that the approximate equivalent to the unique visitors threshold in 3.29 (and therefore to the 0.05% audience share threshold for broadcast TV) in terms of 'streams per month' would be around **2.7 million streams per month**. However, we do not believe that this should be specified in legislation as using a variety of metrics inevitably introduces error and a standardised approach should be encouraged.

3.32   This approach is broadly in line with one of the suggested approaches outlined by the European Commission in its recent consultation on new guidelines under the revised Audiovisual Media Services Directive.

3.33   We think that audience benefit exemptions should generally apply on a platform-by-platform basis. So for example for ITV Hub we would look at the audience size on each platform to which ITV delivers its ODPS (e.g. iOS app, website, smart TV app). However, where those platforms themselves then reach audience via a number of different routes (e.g. different smart television models, or apps like Now TV distributed across other

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[14] This calculation is based on confidential data provided to us by ODPS providers

platforms) we would not expect to calculate audiences for each of those end devices/platforms individually. This is for a number of reasons:

a) It would in many cases be extremely difficult for the ODPS provider to give audience data in relation to these end-user platforms/devices.

b) We want to take account of how many people will benefit if the ODPS provider invests in making a particular catalogue of content accessible. Where a provider makes content accessible on a particular app (a smart TV app, for example), this should then enable accessibility across the devices via which that app is distributed. So, the total audience benefit will be the cumulative audiences who view that app.

3.34 Setting a robust audience share threshold on this basis will enable providers to focus efforts on those services where accessibility will have the biggest impact for consumers. It is based on information that ODPS providers are likely to have access to and reflects the benefits to consumers relative to a provider's efforts and costs.

3.35 The approach requires ODPS providers to submit data which may be commercially sensitive on a confidential basis As explained in 5.19, we plan to publish target levels for providers across those services/platforms which are not exempt. This might give an indication of the popularity of services/ platforms (i.e. whether they may fall above/ below a given audience size threshold). However, we do not expect to publish the basis on which those services/ platforms are exempted (i.e. whether on affordability/ audience size or technical grounds).

> Consultation questions:
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> Question 10: Do you agree with our suggested approach to making exemptions on the basis of audience size?
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> Question 11: Do you agree with our suggested threshold for assessing audience size?
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> Question 12: If you are an ODPS provider, do you have information on unique visitors to your service, including by the platforms through which your service is delivered? Would you be prepared to share estimated audience metrics with Ofcom on a confidential basis, for use in our impact analysis? (Please provide if so)

Technical Difficulty

3.36 In our 2018 Recommendations, we said that providers should be exempt from the requirements where there are significant technical or operational barriers to providing access services via particular platforms.

Issues for consideration

3.37 ODPS providers inform us that technical difficulties often relate to:

a) third-party platforms not supporting access service files in common formats.

b) workflow issues related to the delivery of access services to third-party platforms

3.38 We need to ensure that ODPS providers make genuine efforts to overcome technical challenges, while recognising that the provision of access services via third-party platforms isn't fully within their control.

3.39 While we are keen to support standardisation for access service delivery, we want to avoid mandating technical standards, which might restrain innovation and product development. It would also arguably risk intervening in the market by favouring particular platforms.

Ofcom's current view

3.40 Our initial view is that we should exempt ODPS from providing access services on any platforms which technically *do not support* access services (i.e. via any format/ delivery mechanism). This reflects our current approach under the broadcast accessibility rules; for instance, Ofcom has applied exemptions on the grounds of technical difficulty where standard consumer equipment in a particular country does not support audio description.

3.41 In general, we do not expect to make exemptions on those platforms which are largely under the ODPS provider's control (e.g. their own apps on TV platforms). The costs of development work to offer access services on such platforms will be factored into our assessments of affordability (see Affordability).

3.42 We think the regulations should have the effect of requiring ODPS providers to use *'reasonable endeavours'* to provide access services across the third-party platforms through which their services are available (and which are not excluded on other grounds, e.g. audience size or affordability). Providers should submit evidence to Ofcom on how they have attempted to provide the access services on particular platforms but have been unsuccessful in achieving this (see 5.19).

3.43 We should include details of how we would assess a 'reasonable endeavours' type obligation in our On-Demand Code; which might include requiring providers to offer their access services to third-party platforms and engage in dialogue with the platforms on setting up access service capability.

> Consultation questions:
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> Question 13: Do you agree with our suggested approach to assessing exemptions on the grounds of technical difficulty?

Particular genres/types of programming

Issues for consideration:

3.44 Under the broadcast regulations, Ofcom makes exemptions for particular types of programming on a case by case basis, taking account of the audience benefit and technical challenges of making that content accessible. For example, we currently make exemptions

for the provision of audio description on news and music video channels, where there is little space within the soundtrack to provide audio description. We apply exemptions only when it would otherwise be impractical for broadcasters to meet the audio description target (10%), i.e. when the majority of the channel's output is music videos/ news.

3.45   In response to our 2017 Consultation (see 3.40-3.44 of our 2018 Statement), ODPS providers gave examples of additional types of programming which they felt was either more technically challenging to make accessible on-demand and/or of little benefit to do so: this included audio description on sports events with commentary, content for babies/toddlers, adult content, and programming with a 'short shelf life' on-demand, such as quick turnaround topical programming. However, charities said that people with impairments should not have more restrictions on the type of content they view than the general population.

Ofcom's current view

3.46   We do not have any concrete grounds to suggest that relevant audiences do not wish for the specific genres listed above to be made accessible (in fact, we note research which suggests that subtitled programming is beneficial for children's literacy levels). [15]

3.47   If Government believes that the regulations need to specify which types of programming should be exempt, our provisional view is that the exemptions should only be for audio description on news and music programmes, due to the limited gaps in the soundtrack (and therefore limited scope for adding audio description) and limited benefit to audiences of providing AD on such dialogue-driven programming.

3.48   However, we believe the legislation should give Ofcom discretion to apply exemptions for additional types of programming on a case by case basis, taking account of the qualitative benefit to audiences and/ or technical difficulties. These factors (and evidence relating to audience benefit) are likely to evolve over time and vary depending on the nature of a given ODPS.

3.49   Ofcom would only expect to apply exemptions for particular genres / types of content when such content makes up a significant proportion of the ODPS catalogue, to the extent that it is impractical for providers to meet the targets otherwise.

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[15] See the Turn on the Subtitles campaign

Consultation questions:

Question 14: If Ofcom is given discretion in this area, do you agree with our suggested approach to making exemptions for particular genres/ types of programmes?

Question 15: If Government wants to specify which types of programming should be exempt in the regulations, do you agree with our provisional view that the exemptions should only be for audio description on news and music programmes?

4. Signing

4.1   In our 2018 Recommendations, we suggested targets for sign-interpreted[16]/ sign-presented[17] content but said that the regulations should allow ODPS providers to propose and use alternative arrangements if these arrangements served the relevant audiences better. However, we said that the form of any such alternative arrangements should be a matter for the Code. This proposal reflects the rules and practices which apply to television broadcasters, as set out in the broadcast accessibility Code (see case study below). See paragraphs 4.42 to 4.56 of our 2018 recommendations for more detailed discussion on signing.

4.2   In its 2019 letter to Ofcom, Government requested that Ofcom provide further recommendations on the conditions for establishing alternative arrangements for signing. Our understanding is that these conditions could potentially be included in the legislation itself rather than Ofcom's accompanying Code, although we remain in favour of a more flexible approach with details set out in Ofcom's code[18]. In February 2020 we held a roundtable with charities representing sign language users, to inform this consultation (this was in addition to ongoing stakeholder engagement including with ODPS providers).

Signing Requirements

Key issues

Sign Language users

4.3   British Sign Language (BSL) was recognised by the UK government in 2003 as a minority language. There is not enough evidence to say exactly how many people rely on BSL as their first or main language, but estimates range from 30,000 to 80,000; the British Deaf Association says that it is the preferred language for over 87,000 people, for whom English may be a second or third language[19]. We note that for native BSL users, subtitling is not a direct substitute for BSL interpretation. The 2011 census found that 65% of people who use BSL as a main language cannot speak English or cannot speak English very well.

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[16] Sign-interpretation is when a signer visible on one side of the screen translates a programme into sign-language (e.g. on national news).

[17] Sign-presentation is when programmes are presented entirely in sign-language (i.e. all the presenters or characters on screen use sign-language).

[18] A more flexible approach would, for instance, allow us to put in place some interplay between broadcasters' linear and on-demand signing requirements (e.g. lower on-demand targets if signed programming is shown during popular viewing hours on broadcast).

[19] British Deaf Association figures

Limited evidence base

4.4   Both charities and ODPS providers have pointed to the lack of comprehensive recent research on preferences in this area. In 2015, the British Sign-Language Broadcasting Trust commissioned a review of the existing literature and data about the UK deaf community, and found there is very little up-to-date research in relation to television viewing and technology use. [20]

Variety of views

4.5   It is clear to us from our 2017 consultation and subsequent conversations that there is no 'once size fits all' approach to supporting BSL speakers in their viewing of on-demand services. We have received varied opinions on consumer preferences from charities representing deaf and hard of hearing consumers. While sign-interpretation makes mainstream TV accessible for people who sign, sign-presented programming enables sign-language users to see their culture and preferred language reflected on-screen. The relative benefits can depend on the type of content; for example, sign-interpretation may have more value on mainstream news and current affairs documentaries[21], while sign-presented programming can be particularly beneficial for children's programming. Preference can also depend on degree and nature of hearing loss.

Relative costs of sign-interpretation and sign-presentation

4.6   Our existing cost information suggests that the production of sign-presented content will be many times higher than the production of sign-interpreted content. However, acquiring sign-presented content (rather than producing it) will be cheaper, and we're aware that the costs of providing sign-presentation will vary by genre of programming. Below we set out our current view on how to determine applicable requirements / arrangements but would welcome further information from stakeholders on the costs of providing different forms of signed programming.

> ### Case study: the television signing requirements
>
> #### What?
>
> Under the broadcast requirements, larger broadcasters meet their signing targets primarily with sign-interpreted content (full target 5%). Broadcasters with smaller audience shares must either provide sign-presented programming on their service (with a full target of 75 minutes per month) or may propose alternative arrangements to

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[20] See the BSLBT literature review.

[21] See for example the BSLBT literature review which refers to: Kyle, J. (2007), Sign on Television: Analysis of Data - Based on projects carried out by the Deaf Studies Trust 1993-2005; and Wu, Y. et al (2014). Digital Television and Deaf/Hard of Hearing Audiences in Wales. Swansea.

Ofcom.[22] Many UK broadcasters make a financial contribution (with a full target contribution set at £65,086[23]) to the British Sign Language Broadcasting Trust ("BSLBT"), which commissions and distributes programmes made in British Sign Language (both on its website and through three weekly hour-long slots on Film 4 and Together TV).

In 2019, 14 UK channels had 5% signing targets (including all the PSB main channels and some PSB portfolio channels)[24], 2 UK channels provided 50 minutes of sign-presented programming per month (Boomerang and Cartoon Network), and 59 UK channels made minimum contributions of up to £42,298 to BSLBT– see our most recent access service data report for further details.

Why?

When the television requirements were first introduced in 2004, all broadcasters subject to requirements met signing targets[25], invariably with sign-interpretation. In 2007, Ofcom introduced different requirements for smaller channels in relation to sign-presentation.[26] This was because smaller channels seemed to be attracting very few sign-language users to their sign-interpreted programmes, so the user benefits were not thought proportionate to the costs to broadcasters.[27]

Sky and the Community Channel proposed that broadcasters could fund regular slots for sign-presented programming ("a sign zone"), instead of providing sign-interpretation on their own channels. Groups representing sign-language users supported this proposal, arguing that sign-language users would prefer smaller broadcasters to provide sign-presented programming, and ideally on one easy-to-find channel.[28]

Therefore in 2007 Ofcom introduced a requirement for smaller broadcasters to provide a set amount of sign-presented content per month or contribute to alternative arrangements. In 2008 the BSLBTV's 'BSL Zone' was established as an approved alternative arrangement to which smaller broadcasters could contribute.

Ofcom recognised the preference among BSL users to have sign-presented programming in one place, and that centralised funding would deliver greater economies of scale. Therefore, we set the minimum level of financial contributions to alternative

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[22] See our Television Access Services Code

[23] This figure is expressed in 2018 money; each year Ofcom publishes inflation-adjusted minimum contribution levels for the following year on its website

[24] The PSB portfolio channels are all family channels operated by the PSBs other than their main PSB channels, e.g. ITV2, BBC 4, etc.

[25] See our 2004 TV Access Services Code

[26] See our 2007 Signing Statement. In 2014, Ofcom reviewed and increased the sign-presentation targets and minimum contribution to alternative arrangements – see our 2014 Review of Signing Arrangements

[27] This was one of the findings of our 2006 Review of Television Access Services. It was based in part on results of a survey commissioned by Ofcom which showed there may be around 66,000 people with sufficient knowledge of sign language to benefit from signing on television, but that two thirds of hearing-impaired people who use and understand sign language prefer subtitling. The survey also showed that 44% of households with hearing-impaired members only receive the five main terrestrial channels.

[28] See Annex 6 of our 2006 Consultation on Signing

> arrangements (e.g. to a 'sign zone') at around a third of the estimated costs for broadcasters to meet requirements for sign-presentation on their own channels.[29]

4.7   Many of the considerations that informed the broadcast television signing requirements are also relevant to on-demand signing – for example, the limited benefits of providing small amounts of sign interpreted programming on low audience channels, and the preference for signing in one easy-to-find location.

4.8   However, there are also arguably significant differences and the benefits of signing may differ in relation to television and on-demand services. For example, while sign-interpretation may be particularly valuable on mainstream news, broadcasters tell us that news is less watched in general on catch-up. The presence of a BSL interpreter on-screen has often been cited as off-putting for those who do not use BSL – however, on on-demand services there should be more scope, technically, for providing two alternative versions of a programme (one with and one without BSL interpretation).

Options for consideration

Applicable requirements: sign-interpretation for the larger ODPS providers only?

4.9   We take the broadcasting requirements, and the research informing their development, as our starting point. Following this model, one option would be to require larger providers to offer sign-interpretation, while smaller providers have to either provide sign-presentation or fund an approved provider of sign-presented programming on-demand. This option has the benefit of ensuring that both sign-interpreted and sign-presented content is available on-demand.

4.10   A threshold for being a 'larger provider' could be set on the basis of audience size as is the case in the broadcast requirements. We think that any threshold should be assessed in relation to a given ODPS' most popular platform, rather than on a platform by platform basis. This is because our cost estimates suggest that for most ODPS, the majority of costs are incurred in creating signed content, rather than distributing this content over more than one platform.

4.11   We looked at which broadcast channels fall above/ below the broadcast signing threshold (0.1% UK audience share[30]), and whether we could broadly match the broadcast and on-demand requirements for ODPS providers who are also broadcasters. This would allow broadcasters to repurpose their broadcast signing assets for use on their catch-up services/ extend financial contributions to alternative arrangements. We suggest that in order to do this we could set a threshold of **1 million unique visitors** on average per month, which

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[29] See A1.83 of our <u>2007 Signing Statement</u>
[30] This is measured as 0.1% minutes viewed compared with the total UK household minutes viewed over a 12-month period

represents a proportion of **2% UK online individuals**. [31] However, we believe that some broadcasters attract comparatively larger/ smaller audiences to their ODPS platforms than broadcast channels, and so this threshold may lead to perverse outcomes for some broadcasters where ODPS requirements would <u>not</u> match broadcast requirements.

4.12   We have considered a number of amendments to this model, including:

a) Using the above threshold for ODPS providers who do not have broadcast access service requirements (e.g. Amazon Prime Video), but requiring remaining ODPS providers to repurpose their broadcast signing assets for use on content on their ODPS which has previously been signed on broadcast television. This would allow broadcasters to repurpose content, but we feel this may be unnecessarily restrictive as some programming (e.g. live news) may be of less value signed on-demand. It also does not account for the fact that broadcasters are beginning to provide 'VOD-only' and 'VOD-first' content.

b) Specifying that those ODPS providers currently required to provide 5% sign interpretation on their broadcast services should also provide sign interpretation on their ODPS, with other ODPS providers to provide a smaller amount of sign-presentation or fund alternative arrangements. Again, this may be too restrictive as smaller ODPS providers and "VOD-only" services may have legitimate reasons for wanting to provide sign-interpretation to serve their particular audiences.

c) Follow more closely our original recommendation, with larger providers required to provide 5% sign-interpreted OR 5% sign-presented programming and smaller providers able to choose funding for alternative arrangements instead: we believe that in this situation it is unlikely that a significant number of providers would choose to provide the more costly sign-presented programming, which would restrict the variety of signed content on offer.

Levels of requirement: Sign-presentation / financial contribution to alternative arrangements?

4.13   In any of the models above we need to be clear on the required quantity of sign-presentation or financial contribution to alternative arrangements. We have identified two main options, outlined below:

4.14   **Option A:** Reflect the levels of requirement set for broadcast television (see 4.6). This builds on an established system and for sign interpreted and presented content it enables those with broadcast requirements to utilise the accessible programming they have already created/acquired.

4.15   As on-demand catalogue sizes vary in a way that television schedules do not, absolute figures (e.g. minutes of sign-presented content, £s to pay to alternative arrangements) do

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[31] See audience size section for more detail and analysis on establishing the basis for our proposed audience size thresholds (i.e unique visitors as a proportion of UK online individuals).

not translate across so easily. If we follow the broadcast requirements, 75 minutes sign presented content per month translates into approximately 0.2% sign presented programming. Funding for alternative arrangements should also be scaled in relation to catalogue size[32].

4.16   **Option B:** Set sign presentation targets and alternative requirements at a broadly *equivalent* level to our estimated costs of meeting a 5% sign-interpretation target. This approach could help ensure that providers make their choice on the basis of user preferences, rather than cost considerations.

4.17   Depending on the size of catalogue this would effectively require spending a particular amount on sign interpretation, and/or sign presentation and /or contribution to alternative arrangements.

4.18   In considering the level / nature of requirements, we welcome views on the value of having increased funding to BSLBT, which as above is funded by broadcasters but is already available on-demand.

Ofcom's view

4.19   Given our relative lack of information over sign language user preferences we outline here our current view, but welcome comments and further information.

4.20   Our current view is that it would be preferable for ***all* providers to have a choice of providing (at full target stage) 5% sign-interpretation, and/or a smaller amount of sign-presentation and/or a financial contribution to an approved provider of sign-presented programming on-demand**. In making this choice, providers would need to provide evidence to Ofcom that they have had regard to Ofcom's best practice guidelines for providing signing on ODPS.

4.21   This option could allow providers to tailor their signing offering to the nature of their service (e.g. its size and programme genres), while ensuring that providers take account of BSL user preferences. It would also avoid undue administrative complexity in determining the appropriate requirements.

4.22   Requiring broadcasters to have regard to best practice guidelines would allow for development in our understanding of BSL audience preferences. We are planning to consult on revisions to our existing best practice guidelines[33] on broadcast access services in due course, expanding them to include guidance for ODPS providers. To inform this work, we plan to conduct a survey among BSL users on their preferences for signing on television and on-demand services, including in relation to sign-interpretation/ sign-presentation across different genres and types of services.

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[32] E.g. Pegging the current maximum contribution to the catalogue size equivalent to a year's broadcast schedule (i.e. 8760 hours).
[33] See Annex 1 of our TV Access Services Code.

4.23   We believe that the proposal above could be modified by a requirement that any content which has previously carried BSL interpretation on broadcast should be made available with BSL when it appears on that broadcaster's on-demand service. This would ensure adequate provision of sign-interpretation on PSB catchup services. However, we do believe that such sign-interpretation would usually be repurposed in any case.

4.24   On the levels of sign-presentation requirements, we prefer Option A outlined above (4.21-4.22), where sign-presentation targets and contributions to alternative requirements reflect the levels already set for broadcast television (scaled to take account of ODPS catalogue size). We believe that this will encourage the provision of sign-interpretation where possible, as it is likely to be less costly than sign-presentation. It would otherwise enable effective collaboration between providers in the form of alternative arrangements such as funding the BSLBT's BSL Zone.

Signing Versus Subtitling

Issues for consideration

4.25   In addition to our proposals above, we have also considered whether ODPS providers should be exempt from the signing targets in the case that it allows them to offer considerably more subtitling/ audio description.

4.26   Our understanding is that signing is significantly more expensive than subtitling and audio description.[34] We also recognise that some sign-language users also use subtitles, and that subtitling and audio description serve larger audiences.[35]

4.27   Our analysis suggests that the majority of ODPS providers (who are not "small companies") should either be able to afford the full targets, or are likely to be exempt from all requirements, even if we were to apply an exemption for signing. Therefore, in practice, any signing exemption is only likely to apply in limited circumstances.

Ofcom's current view

4.28   We think that ODPS providers should be exempt from providing signing if the cost of meeting reduced targets (e.g. 33% or 66% of the subtitling targets and the full audio description and signing targets) exceeds the affordability threshold. This would mean that some providers may be able to afford some subtitling and audio description rather than being exempted from requirements entirely.

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[34] This is based on confidential costs submitted by industry in response to our 2018 Consultation.

[35] Estimates suggest there are around 11 million people in the UK with hearing loss, 2 million people with poor or no vision and 24,000 people in the UK who use British Sign Language as their main language. Sources: Action on Hearing Loss, 2015, Hearing Matters, The economic impact of partial sight and blindness in the UK adult population, July 2009, Access Economics, p. 45), British Deaf Association statistics

Consultation questions:

Question 16: Do you have any views on our preferred approach to determining applicable signing requirements?

Question 17: Do you prefer Option A or Option B for determining the levels of sign-presentation / funding for alternative arrangements and why?

Question 18: What alternative signing arrangements do you think should be in place for ODPS? Should this be an extension of the current arrangement with BSLBT?

Question 19: Do you believe there should be an exemption for signing in cases where it allows ODPS providers to offer subtitling and AD?

Question 20: Do you have any information on the relative costs of providing sign-interpreted or sign-presented programming? If so, please indicate whether you would be happy for Ofcom to share this information with Government on a confidential basis, for the purpose of their impact assessment to inform the drafting of regulations.

5. Targets and Implementation

5.1 In our 2018 Recommendations, we said that the regulations should require the following targets to be met:

- from the 2nd anniversary of when the regulations come into effect or (if afterwards) when the service starts: 40% subtitling, 5% audio description and 5% signing.
- from the 4th anniversary of when the regulations come into effect or (if afterwards) when the service starts: 80% subtitling, 10% audio description and 5% signing.

5.2 We said that the legislation could set out levels of reduced requirements for those who cannot afford the full requirements (decreasing subtitle targets to 66% or 33% of the full requirements).

5.3 The regulations may need to include further detail on how providers should meet the above targets, including when services are available across multiple platforms. This section sets out our current view on this additional detail, along with how we expect to implement the requirements in practice.

Further Detail on Targets

How should targets apply to on-demand catalogues?

Issues for consideration

5.4 Under the broadcast requirements, we encourage broadcasters not to seek to fulfil their obligations by scheduling multiple repeats of programmes with access services (see 1.41 of TV Access Services Code). In our conversations leading up to this consultation, some charities have said there may be a greater risk that ODPS providers could leave the same signed and audio described content up on their service for a long period of time – this is because the nature of an 'on demand' catalogue means that content can be kept on a service more easily, whereas for broadcast services there is a set schedule in which repeats will be evident to all viewers. This is a particular risk with smaller parts of the catalogue such as signed and audio described content, which arguably could be kept on a service without distorting its overall offering.

Ofcom's Current View

5.5 We think the legislation could require ODPS providers to refresh their provision of access services at the same rate at which they refresh content on their service more generally.

How should targets apply across multiple platforms?

Issues for consideration

5.6   For ODPS providers with services available across multiple platforms, the targets will apply to a larger quantity of content i.e. the combined content on those platforms. In these circumstances, there are various ways in which the regulations could require the targets to be met, for example:

5.7   **Option 1 – The Flexible Approach:** the regulations could allow providers to meet the targets in a flexible manner across their non-excluded platforms[36], i.e. to offer higher/ lower levels of accessibility on individual platforms, while providing the required levels of accessible programming overall. The regulations could specify that providers have to take into account **audience benefit** when prioritising platforms to meet the targets (and report on how they have done so to Ofcom). We could give guidance on prioritising platforms in our best practice guidelines.[37]

5.8   As outlined in our 2018 recommendations, ODPS providers might justify their prioritisation of certain platforms over others by self-reporting audience figures. They could also take into account broader considerations of audience benefit: for instance, some ODPS providers and charities have said that certain platforms can have better accessibility features and may be more useful to those with sight and/ or hearing impairment (see 3.31 of our statement).

5.9   **Option 2 – The Prescriptive Approach:** the legislation could specify that access services should be distributed equally among all non-excluded platforms. The disadvantage is that for platforms made accessible, the average levels of accessibility would initially be lower – however, this could be off-set by requirements increasing progressively over time, ultimately leading to more comprehensive cross-platform accessibility.

Ofcom's Current View

5.10   We prefer Option 2. This is because we want to establish an expectation that on-demand services should be made accessible across all platforms, as far as possible. Our cost estimates also suggest that for most ODPS providers (who are not "small companies"), the majority of costs are incurred in creating or repurposing access services, rather than setting up access service capability on new platforms.

5.11   Requiring targets to be met across a broader range of platforms should encourage industry players to work together to achieve greater technical standardisation across platforms. While the regulations can only apply to ODPS, Ofcom also aims to encourage progress

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[36] i.e. all platforms which have not already been excluded on grounds of audience size or technical difficulty.
[37] We plan to expand our existing best practice guidelines on access services for broadcasters to include guidance for ODPS providers. We will consult on revisions to these guidelines in due course.

among third-party platform providers, both in supporting access services and in improving usability features. We are considering how we can best influence third-party platforms/ device manufacturers in this regard; for instance, by introducing guidance and facilitating best practice sharing across industry.

5.12   Option 2 also means relevant consumers are less likely to need to purchase new services/ devices in order to enjoy on-demand content. It gives more certainty over where (and at what level) they can expect to find accessible content. The relevant consumers are unlikely to have access to all the platforms on which ODPS content is available, such as third-party subscription on-demand services (e.g. Amazon Prime, Now TV): the average number of on-demand services paid for by a UK household is 0.8, declining to 0.5 among households with a sight or hearing-impaired adult. [38] ODPS content is also on pay TV platforms (e.g. Sky and Virgin), but only 46% of UK households with a sight or hearing impaired adult use any pay TV service. [39] Moreover, 52% of consumers have never switched their TV provider, and this figure is higher among disabled consumers and over 65s [40] (59%, 61%). [41]

> Consultation questions:
>
> Question 21: Do you agree with our suggested approach on how targets should be met across ODPS services and platforms?

Implementation and Enforcement

5.13   In this section we set out an initial view of how we would expect to implement the on-demand requirements, if the regulations follow our proposals. We believe that the process of implementation should give clarity to ODPS providers while allowing some flexibility to reflect the nature of ODPS catalogues. The process needs to be fair (reflecting the complexities of ODPS provision) but clear and understandable.

5.14   As stated above, we have recommended to Government that the regulations set out 2-year and 4-year targets, along with reduced subtitling targets for those who can't afford the full requirements. Our initial view is that 2-year and 4-year targets could be supplemented with further advisory targets which we would include in our On-Demand Code for ODPS providers. These would be for the first and third year in which the regulations are in force.

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[38] See QH87A in Ofcom's Technology Tracker 2020 "Which of these TV services does anyone in your household ever use to watch programmes, films or other video content?". This data is not shown in the tables, but was calculated from the data for this consultation

[39] See QH87A in Ofcom's Technology Tracker 2020 (subset tables) "Which of these TV services does anyone in your household ever use to watch programmes, films or other video content?"

[40] People with sight and/or hearing impairment 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).

[41] See Q28 in Ofcom's Switching Tracker 2019 ("Have you or your household ever changed the company that provides your TV service?")

This will assist providers and Ofcom in monitoring progress towards meeting the statutory targets.

5.15 We think the targets should be implemented on a calendar year basis, in line with the targets for broadcasters[42]. This allows us to align implementation processes of both regimes where appropriate, providing simplicity for both providers and consumers.

5.16 As outlined in our 2018 Recommendations (5.6-5.8), we do not consider it appropriate to determine all the appropriate exemptions for ODPS in advance, given that a provider's ability to meet the targets may change during the course of the year (for instance, its catalogue size could dramatically increase, making the target levels less affordable).

Determining applicable target levels

5.17 Before each calendar year, we expect to assess whether or not a given provider[43] should be exempt from requirements on the basis that they cannot afford the full or reduced requirements within 1% of their turnover (see 3.13). We would expect to indicate where a provider is subject to the full targets or reduced target levels (see 4.36).

5.18 The applicable target levels would be calculated by reference to a given provider's services and platforms which have not been excluded on other grounds (e.g. on audience size/technical difficulty grounds). We expect to base these calculations on catalogue size, number of platforms on which the service is available, average costs of establishing access service functionality on a given platform, and average costs of creating or repurposing access services, relative to provider turnover. We expect to request that providers submit relevant costs to us on a regular basis (e.g. every two years) in order to calculate the average costs.

5.19 In our cost assumptions informing this consultation (see Annex 2), we have taken a conservative approach to estimating likely costs based on information we currently have access to; for instance, we have assumed that ODPS content is replaced entirely over the course of a year. However, in practice, when determining which targets are applicable for a given provider, we expect to be able to take account of factors such as:

- the proportion of ODPS content which a given provider is likely to replace each year (rather than archive).
- for given catch up providers (i.e. with obligations for their broadcast services), the proportion of content which is likely to be repurposed from broadcast channels.

5.20 These factors are likely to affect costs (e.g. the costs of repurposing access services for use on-demand is cheaper than creating access services from scratch) and may vary depending on the nature of a given ODPS (e.g. some catch-up services offer more 'box-set' archived

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[42] See our TV Access Services Code
[43] This excludes providers who qualify as a "small company" under the Companies Act 2006, who we expect to exempt from the requirements altogether on affordability grounds (see 3.12)

content than others)[44]. Ideally, we would receive relevant information from all providers on a regular basis in order to determine which target levels apply. However, if some providers are unable to provide this information, we may need to calculate average proportions of replaced/ repurposed content and use these averages in assessing which targets are applicable.

5.21   We would also ideally take account of the proportion of content which is repeated across different branded services offered by the same ODPS provider (e.g. between Sky Go and Sky On-Demand). This may vary considerably by provider, and could affect costs (e.g. if access services are created for one service they would not need to be created again for another). However, our initial view is that it would <u>not</u> be practical or proportionate to ascertain the degree to which different branded services share content. However, we welcome views from ODPS providers on the feasibility of submitting information to us on a regular basis (e.g. every 2 years) on the hours of unique content provided across their differently branded on-demand services.

5.22   We expect that the applicable target level will be judged in relation to the 'relevant date', defined as the date that the regulations come into force or the date at which a new service starts (whichever is later). The default position is that there are requirements from the relevant date, and so where a service has an exemption from the requirements and then loses that exemption (e.g. due to an increase in audience size) we believe that it should meet the relevant requirement for that year (i.e. full requirements if this is more than 4 years past the relevant date). This reflects the situation for broadcast accessibility requirements, and avoids a situation where providers fall in and out of scope of the requirements, repeatedly returning to the lowest level of requirement. However we welcome views on this approach.

Order of events

Before each calendar year when target is in force:

- Identify and exempt providers who qualify as "small companies" (publicly available info – Companies House).
- Invite submission/confirmation of information on audience share
- Identify and exempt services (as provided on a specified platform) with an audience share of 0.4% or less (information submitted to Ofcom by provider on confidential basis)
- Identify and exempt any services as provided on platforms which technically do not support accessibility
- Of the remaining providers, calculate estimated costs of provision across all services and platforms (that have not already been exempt) relative to overall turnover (taking

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[44] For example, an Ampere Analysis report found that over 80% of ITV Hub content remains on the service for one month or less, while more than 90% of All 4's catalogue remains on the service for over a year (based on the window of content available in March 2019)

account of the previous year's reported information on catalogue size). Identify and exclude those for whom this would cost >1% turnover.

- Publish confirmation of which targets providers are expected to meet, detailing levels across services and platforms

End of each calendar year when target is in force:

- Request data from ODPS providers on levels of accessibility achieved (relative to catalogue size)45; measures taken to ensure usability and quality of access services; and plans to progressively make service more accessible46,47
- Provide an opportunity for ODPS providers who have not met requirements to demonstrate to Ofcom's satisfaction that this was due either to:
  - Significant changes in circumstance (e.g. changes in catalogue size); or
  - Failure of a third-party platform to carry their access services to consumers despite demonstrable 'reasonable endeavours' on the part of the ODPS provider.
- Confirm retrospective application of the appropriate target levels or exemptions, OR commence breach proceedings

Regular information gathering:

- Periodically (we suggest every two years) obtain information from ODPS providers, including on costs for providing access services; the proportion of ODPS content retained on the service each year (rather than replaced); and (for providers who are also broadcasters) the proportion of content repurposed from broadcast services

Consultation questions:

Question 22: Do you agree with our suggested approach to implementing the requirements?

Question 23: If you are an ODPS provider, would you be able to provide Ofcom with the information outlined in 5.18 to 5.21 on a regular basis (e.g. every 2 years)?

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[45] Note that we already require this data from ODPS providers – see for example our report on the 2018 calendar year.
[46] In our 2018 recommendations, we said that the regulations should include comprehensive reporting requirements, including that providers should report on measures taken to ensure that the required access services are of sufficient quality and can be used effectively by their intended audiences, along with their plans to continuously and progressively make their services more accessible. To assist ODPS providers with meeting the reporting requirements, we plan to expand our existing best practice guidelines on access services for broadcasters to include guidance for ODPS providers. We will consult on revisions to these guidelines in due course.
[47] Our recommended requirements for providers to report on their plans to continuously and progressively make their services accessible is in line with the revised AVMS directive, which includes a requirement that "Member States shall encourage media service providers to develop accessibility action plans in respect of continuously and progressively making their services more accessible to persons with disabilities." Information about the revised AVMS directive can be found here, with the provisions on accessibility in Article 7 here.

A1. Extracts from Digital Economy Act 2017

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

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

(2) After section 368BB insert—

"*Accessibility*

368BC   Accessibility for people with disabilities

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

(2) The requirements that may be imposed include—

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

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

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

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

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

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

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

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

(a)the outcome of the consultation, and

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

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

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

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

368BD Enforcement of regulations under section 368BC

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

> (a) give the provider an enforcement notification under this section;

> (b) impose a penalty on the provider in accordance with section s368J.

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

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

(4) An enforcement notification must—

> (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and

> (b) fix a reasonable period for taking the steps required by the notification.

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

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

> (a) for an injunction,

> (b) for specific performance of a statutory duty under section 45 of

> the Court of Session Act 1988, or

> (c) for any other appropriate remedy or relief.

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

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

(4) After that section insert—

"368CA Code on accessibility for people with disabilities

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

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

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

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

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

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

(c)persons with a dual sensory impairment,

they consider appropriate."

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

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

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

(b) in paragraph (b)—

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

(ii) for "or 368I" substitute ", 368I or 368BC".

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

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

A2. Affordability Assumptions

A2.1   This Annex lays out the assumptions we have made in our analysis of potential exemptions on the grounds of affordability (see 3.12-3.16). It should be read in conjunction with our 2018 impact assessment which uses some of the same assumptions.

A2.2   We acknowledge that estimating costs is not straightforward due to the complexities and uncertainties of ODPS distribution. ODPS are available over a large range of platforms and devices, which can have varying requirements for how access services are delivered. These requirements are also subject to change as third-party providers can regularly update their platforms/ devices. Nevertheless, we have estimated likely costs based on information provided to us in response to our first consultation, and our knowledge of regulated ODPS.

A2.3   In making these estimates we have where possible used the upper limit of likely costs, except in cases where estimates have diverged significantly (where we have taken an average). We have also made conservative assumptions about the types of costs which may apply; for example, for 'on-demand only' ODPS we have assumed that all access services have to be created from scratch, rather than purchased from content providers at lower costs. Our calculations also do not account for any revenue gains[48] from providing access services, which in practice may help to offset costs.

A2.4   We have taken a conservative approach to these calculations to demonstrate the scale of impacts in a 'high cost' scenario. We expect that actual costs are likely to be lower in practice. Accordingly, our approach to calculating applicable target levels (as set out in 5.19-5.22) is likely to differ from the approach set out in this annex in some aspects.

Sources of Information

A2.5   We have estimated the impact of potential affordability exemptions for ODPS providers who are not "small companies" under the Companies Act 2006 (see 3.12-3.16). In order to do this, we have used:

a) **The cost of providing subtitles / audio description / signing per hour, per platform.** See Figure 1 for a description of the cost categories we understand to be involved in providing access services for the first time on a given platform, and the assumptions we have made in using these cost categories in our analysis.

b) **The catalogue size of each ODPS provider**, in order to assess the likely costs for a given provider. See Figure 2 for the assumptions we have made in relation to catalogue size.

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[48] For example, providing access services may attract more viewers to ODPS services, resulting in increases in advertising or subscription revenue.

c) **The number of platforms on which ODPS are available,** also to assess the likely costs for a given provider. See Figure 2 for the assumptions we have made in relation to platforms on which ODPS are available.

d) **The turnover of each ODPS provider**, in order to assess the affordability of the likely costs. Figure 2 also outlines the assumptions we have made in relation to provider turnover.

Figure 1: Cost categories and assumptions

Cost category	Detail	Estimates / sources (all CONFIDENTIAL)	Assumptions
Development	Set-up costs in relation to each platform. This includes establishing the workflow and technology to allow the distribution of access services via a given platform. This could include e.g. introducing the capacity to convert subtitle files to the format required by a given platform. Platform updates – once access services are available on a particular platform, that platform can still change, requiring additional expense to adapt access services.	✂ Average estimated cost per platform = £200,000	A small number of respondents to our first consultation provided confidential estimates of development costs per platform. For this analysis we have used an average of the estimates relating to set-up costs on a single platform. For multiple platforms we multiply these costs accordingly. However, costs are likely to be significantly reduced over multiple platforms and therefore this approach is conservative. This is because some platforms accept access services in common / shared technical formats, and therefore costs of setting up the system to convert files to a given format do not necessarily need to be replicated for every platform. ATVOD's working group on access services found in 2015 that of 37 platforms, all

			but 4 could support subtitles in a common format.
Running	Contract management with the provider of access services provider AND/OR Internal operating costs, including additional overheads relating to the provision of access services (e.g. additional staff)	✂	We do not have enough information to include these costs at this stage, but the limited information we do have suggests that the costs are relatively small and will not have a material impact on our overall cost estimates. We also believe that some estimates of production/repurposing costs (see below) will have already included these costs.
	Purchase of access service assets (e.g. subtitle file) from content provider AND/OR	✂	We have used confidential estimates provided by a respondent.
	Costs of creating access services from scratch AND/OR	✂	For 'on-demand only' services and broadcast services without requirements under the broadcast accessibility code, we have assumed that all required access services have to be created. This is likely to be a large overestimate as many access services can be purchased from content providers as above. However, we do not have a robust estimate of the proportion of

			programming to which this applies.
	[49]Cost of repurposing broadcast access services for use on-demand, which may include automated file format conversion and manual intervention (e.g. to remove ad breaks from broadcast assets where necessary).	✂	For broadcasters with existing access obligations (ITV, C4, C5) we have assumed that costs are all repurposing costs. We are aware that broadcasters provide some 'VOD first' programming which has not previously been broadcast with access services. However, we don't think that including this would lead to a material increase in our assumed costs. The large majority of content on such services is currently 'catch-up' content from broadcast services – it is highly likely that our recommended targets can be met with this content alone. As no repurposing costs estimates have been provided for signing, we have assumed as an upper estimate that creation costs will be replicated.
Additional	Monitoring	N/K	ODPS providers (currently excluding providers of adult services) are already obliged to monitor and report on their access service provision. We therefore do not believe
	Reporting	N/K	

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[49] For consistency, we have used the most comprehensive figures provided to us (confidentially) by one industry respondent. However, we note that these figures are consistent with partial estimates provided by other industry respondents.

			our proposals in this area (see implementation) will involve significant additional expense, although we acknowledge that the more extensive reporting obligations will require some additional costs, particularly relating to staff time.

A2.6   In line with Figure 1 our assessment of likely costs assumes that running costs per hour are as follows. We have rounded running costs to the nearest ten pounds, in order to avoid spurious accuracy given the uncertainty around costs of repurposing in particular.

    a) For creating content:

        i) Subtitles = ✂

        ii) AD = ✂

        iii) Signing = ✂

    b) For repurposing broadcast content:

        i) Subtitles = ✂

        ii) AD = ✂

        iii) Signing = ✂

A2.7   Our cost assessment also assumes that upfront set-up costs are £200,000 per platform. We have amortized these costs over a five-year period to estimate that the **annualised set-up costs are £40,000 per platform**. We have used a five-year period as a rough estimate of the 'useful life' of the set-up costs: we are aware that on-demand platforms (and the associated ingestion / workflow process) can remain constant for over ten years in some cases; but on the other hand, more minor updates to platforms can be made on a much more regular basis and can have knock-on effects for access service support.

Figure 2: Assumptions in relation to catalogue size, turnover and number of platforms

	Assumptions
Catalogue size	We have used data returns submitted to Ofcom by providers for our 2018 Access Services Data report. These returns include information on the catalogue size for each platform on which a given ODPS is available. Catalogue size refers to the number of

	hours of unique programmes available during the course of a whole calendar year.
	For providers with one branded ODPS, we have used the largest reported catalogue size for a single given platform, on the basis that content on other platforms is likely to be a subset of this larger catalogue. So we have not repeated costs of creating or repurposing access services for different platforms.
	We do not have information on the extent to which content is repeated across different ODPS offered by the same provider. Therefore, for providers with more than one branded ODPS, we have used the largest reported catalogue size (on a single given platform) among their services. This is on the basis that there is likely to be considerable repetition of content over different ODPS (as these tend to be catalogues packaged for distribution in different countries, for example). [50]
	There are several providers for whom we did not receive data on catalogue size for our 2018 report, and which are therefore not included in our calculations.
Number of platforms on which ODPS are available	We have included the platforms listed in returns submitted to Ofcom by providers for our 2018 Access Services Data report. For providers with multiple ODPS, we have included each unique platform on which one or more ODPS is available.
Provider turnover	We have used Companies House data for 2018 (i.e. matching the year to which the catalogue size data relates).

Cost Calculations

A2.8   In Figure 3, we have estimated the costs of meeting the 4-year targets (see 5.1) in one year, from a starting point of zero provision. We have established these costs as a percentage of provider turnover, using the following calculation:

- Running Costs: multiplied each provider's catalogue size by the costs of providing subtitles, audio description and signing per hour (see A2.4) and the % targets
- Set-Up Costs: multiplied the number of platforms on which each provider is available by the annualized set-up cost per platform of £40,000 (see A2.5)
- Added the Running Costs and Set-up Costs together and divided them by each provider's turnover

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[50] See our 2018 Access Services Data report for examples of providers with a single branded ODPS, such as Channel 4, and more than one branded ODPS, such as the Walt Disney Company and Sky UK.

A2.9   We have not modelled the introduction of requirements across a number of years, because we do not have sufficient confidence in data on the extent to which on-demand content is renewed / replaced over time. These factors are also likely to vary by provider and by year. We have assumed therefore that content is replaced entirely over the course of a year (i.e. for broadcasters' catch-up this would broadly reflect the year's 8760 broadcast hours being added and removed across the year). This leads to an upper limit estimate – costs are likely to be <u>significantly</u> lower as programmes with access services remain on the service or are put on the service for a second time (and therefore contribute to the target at very limited cost). In summary, costs are likely to reduce significantly over time. We have assumed that the most significant costs of converting access services for delivery across different platforms are included in the estimated set-up costs (which include system capacity to convert files). Running costs of conversion (or creation / repurposing) are not replicated for each platform. Both set up and running costs for conversion are likely to reduce over time in line with industry technical standardisation, which will reduce the need for multiple file formats.

A2.10   We have not modelled the impact of our proposed exemptions on ground of audience size and technical difficulty (see Exemptions section). We expect that some services and platforms will be exempt on these grounds, and so in practice expect the costs of provision to be lower. Similarly, we have modelled the costs of sign interpretation but have not modelled the impact of instead providing sign-presentation or funding a provider of on-demand signed programming (see 4.19-4.24). However, we wouldn't generally expect such arrangements to be more burdensome than providing sign-interpretation.

Figure 3: Costs of Meeting the 4-Year Targets[51]

Provider	Provider Type[52]	No. of Platforms	Hours of Content	Running Cost (£)	Set Up Cost (£)	Total Cost	Turnover (000's)	% of Turnover (%)
✂	Catch-Up	✂	✂	✂	✂	✂	✂	0.1
✂	Catch-Up	✂	✂	✂	✂	✂	✂	0.1

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[51] The only confidential information used in these calculations is the costs of providing subtitling, audio description and signing per hour (see A2.5); all other information is publicly available (e.g. in our access services data report). However, we have redacted all information which might identify the providers on which these calculations are based, and therefore enable the confidential costs to be back-calculated.

[52] By "catch-up" providers, we mean providers which have existing access service obligations for broadcast channels, and for whom we have assumed that all running costs for providing subtitles, AD and signing are "repurposing" costs. By "on-demand only", we mean all remaining providers for whom we have assumed that all running costs are "creation" costs – see A2.4

✄	On-Demand Only	✄	✄	✄	✄	✄	✄	0.02
✄	Catch-Up	✄	✄	✄	✄	✄	✄	0.1
✄	Catch-Up	✄	✄	✄	✄	✄	✄	0.3
✄	Catch-Up	✄	✄	✄	✄	✄	✄	0.1
✄	On-Demand Only	✄	✄	✄	✄	✄	✄	0.8
✄	Catch-up	✄	✄	✄	✄	✄	✄	0.1
✄	On-Demand Only	✄	✄	✄	✄	✄	✄	0.1
✄	On-Demand Only	✄	✄	✄	✄	✄	✄	0.03
✄	Catch-Up	✄	✄	✄	✄	✄	✄	0.5
✄	Catch-Up	✄	✄	✄	✄	✄	✄	0.7
✄	Catch-Up	✄	✄	✄	✄	✄	✄	0.6
✄	Catch-Up	✄	✄	✄	✄	✄	✄	1.8
✄	On-Demand Only	✄	✄	✄	✄	✄	✄	0.3
✄	Catch-Up	✄	✄	✄	✄	✄	✄	1.5
✄	Catch-Up	✄	✄	✄	✄	✄	✄	1.0
✄	Catch-Up	✄	✄	✄	✄	✄	✄	0.4

✂	Catch-Up	✂	✂	✂	✂	✂	✂	1.5
✂	On-Demand Only	✂	✂	✂	✂	✂	✂	3.4
✂	On-Demand Only	✂	✂	✂	✂	✂	✂	0.9
✂	On-Demand Only	✂	✂	✂	✂	✂	✂	0.5
✂	On-Demand Only	✂	✂	✂	✂	✂	✂	27.8
✂	Catch-Up	✂	✂	✂	✂	✂	✂	7.3
✂	On-Demand Only	✂	✂	✂	✂	✂	✂	1.7
✂	On-Demand Only	✂	✂	✂	✂	✂	✂	22.6
✂	On-Demand Only	✂	✂	✂	✂	✂	✂	10.7
✂	On-Demand Only	✂	✂	✂	✂	✂	✂	1.5

Consultation question:

Question 24: Do you have any comments on the cost assumptions included in this Annex?

A3. Equality Impact Assessment

A3.1   In this Annex, we assess the potential impact of our consultation proposals on the following equality groups: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation[53]. We refer to groups of people with these protected characteristics as 'equality groups'.

A3.2   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.

A3.3   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

A3.4   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')[54]

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.

A3.5   As stated at 2.11, this consultation should be read in conjunction with our 2018 Recommendations to Government. Our recommended targets on subtitling, audio description and signing (see 2.7) should bring measurable progress in the amount and choice of accessible on-demand content to people with disabilities.

A3.6   On-demand viewing is an important source of information and entertainment and is increasing in popularity.[55] We expect that the recommended targets will result in increased

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[53] As defined in the Equality Act 2010

[54] 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).

[55] For example, the proportion of households who use any on-demand service saw an indicative increase from 49% in 2018 to 59% in 2020. NB: these figures are not directly comparable because we changed how we asked the relevant questions on TV and on-demand services in Ofcom's 2020 Technology Tracker. See QH87 "Which of these TV services does anyone in your household ever use to watch programmes, films or other video content" in Ofcom's Technology Tracker 2018 and QH71 "Does your household subscribe to any of these paid-for online on-demand services to watch TV programmes or films?" in Ofcom's Technology Tracker 2020 .

enjoyment and inclusion in society by the relevant equality groups, along with reducing the current frustrations faced due to the inaccessibility of ODPS content (see A3.26-A3.28 of our 2018 statement).

A3.7   Our proposed system of exemptions (see Exemptions) should only apply in cases where meeting the full requirements would incur a disproportionate burden on ODPS providers. As set out in Exemptions we only expect outright exemptions to apply in limited circumstances. For example, our proposed exemptions for audience benefit (see 3.19-3.34) should enable providers to focus their efforts on making their services accessible on popular platforms, on which the likely benefits to relevant consumers are greater. Therefore, we do not expect exemptions to lead to a significant reduction in benefit to the relevant equality groups. Our proposals on signing arrangements (see Signing) are aimed at ensuring that both sign-interpreted and sign-presented content is made available on-demand, which we expect will increase the benefits to sign-language users.

Conclusion

A3.8   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 25: 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.

A4. Responding to this consultation

How to respond

A4.1   Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 16 September 2020.

A4.2   You can download a response form from https://www.ofcom.org.uk/consultations-and-statements/category-1/making-on-demand-services-accessible. You can return this by email to the address provided in the response form.

A4.3   If your response is a large file, or has supporting charts, tables or other data, please email it to vodaccessibility@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet.

A4.4   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.

A4.5   We will publish a transcript of any audio or video responses we receive (unless your response is confidential)

A4.6   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.

A4.7   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.

A4.8   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 7. 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.

A4.9   If you want to discuss the issues and questions raised in this consultation, please email vodaccessibility@ofcomorg.uk.

Confidentiality

A4.10   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.

A4.11   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.

A4.12   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.

A4.13   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

A4.14   Following this consultation period, Ofcom plans to publish a statement in autumn 2020.

A4.15   If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

Ofcom's consultation processes

A4.16   Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 5.

A4.17   If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.

A4.18   If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
Email: corporationsecretary@ofcom.org.uk

A5. Ofcom's consultation principles

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

Before the consultation

A5.1   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

A5.2   We will be clear about whom we are consulting, why, on what questions and for how long.

A5.3   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.

A5.4   We will consult for up to ten weeks, depending on the potential impact of our proposals.

A5.5   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.

A5.6   If we are not able to follow any of these seven principles, we will explain why.

After the consultation

A5.7   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.

A6. 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? _____

_____

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)

A7. Consultation questions

Question 1: Do you agree with our suggested approach to assessing exemptions for affordability, i.e. using overall turnover?

Question 2: Do you agree with our suggestion that 'small companies' should be exempted from the requirements?

Question 3: Do you agree that a threshold level of 1% for the remaining ODPS providers is proportionate?

Question 4: If you are an ODPS provider, can you provide any information on the costs of providing access services, including in relation to the various platforms by which services are delivered?

Question 5: If you are an ODPS provider, can you provide any information on the proportion of your ODPS catalogue which is replaced over a given month/ year (rather than archived)?

Question 6: If you are an ODPS provider and have a broadcast television service, can you provide any information on the proportion of your ODPS catalogue which is repurposed from broadcast television over a given month/ year?

Question 7: If you are an ODPS provider with more than one ODPS, can you provide any information on the hours of unique content provided across all your ODPS over a given year?

Question 8: If you are an ODPS provider, can you provide any information on how much advertising/ subscription revenue you would expect to gain from providing access services on your content?

Question 9: If you have provided answers for any of Question 4-8 above, would you be happy for Ofcom to share this information with Government on a confidential basis, for the purpose of their impact assessment to inform the drafting of regulations?

Question 10: Do you agree with our suggested approach to making exemptions on the basis of audience size?

Question 11: Do you agree with our suggested threshold for assessing audience size?

Question 12: If you are an ODPS provider, do you have information on unique visitors to your service, including by the platforms through which your service is delivered? Would you be prepared to share estimated audience metrics with Ofcom on a confidential basis, for use in our impact analysis? (Please provide if so)

Question 13: Do you agree with our suggested approach to assessing exemptions on the grounds of technical difficulty?

Question 14: If Ofcom is given discretion in this area, do you agree with our suggested approach to making exemptions for particular genres/ types of programmes?

Question 15: If Government wants to specify which types of programming should be exempt in the regulations, do you agree with our provisional view that the exemptions should only be for audio description on news and music programmes?

Question 16: Do you have any views on our proposed approach to determining applicable signing requirements?

Question 17: Do you prefer Option A or Option B for determining the levels of each signing requirement?

Question 18: What alternative signing arrangements do you think should be in place for ODPS? Should this be an extension of the current arrangement with BSLBT?

Question 19: Do you believe there should be an exemption for signing in cases where it allows ODPS providers to offer subtitling and AD?

Question 20: Do you have any information on the relative costs of providing sign-interpreted or sign-presented programming? If so, please indicate whether you would be happy for Ofcom to share this information with Government on a confidential basis, for the purpose of their impact assessment to inform the drafting of regulations.

Question 21: Do you agree with our suggested approach to setting targets across ODPS services and platforms?

Question 22: Do you agree with our suggested approach to implementing the targets?

Question 23: If you are an ODPS provider, would you be able to provide Ofcom with the information outlined in 5.18 to 5.21 on a regular basis (e.g. every two years)?

Question 24: Do you have any comments on the cost assumptions included in Annex 2?

Question 25: 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.