

Further Statement: Making on-demand services accessible

Informing requirements to make On-Demand Programme Services more accessible to disabled people

STATEMENT:

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Contents

Section

1. Overview	1
2. Background	4
3. Making Proportionate Exemptions	9
4. Signing	28
5. Implementation and enforcement	32
6. Best Practice	41

Annex

A1. Affordability/ Signing Assumptions	43
A2. Equality Impact Assessment	55
A2. Relevant legislation	58

1. Overview

- 1.1 This is our second report on making video on-demand services more accessible to people with sight and/or hearing impairments. It contains further recommendations to Government on making the accessibility of on-demand services a legal requirement. The Digital Economy Act 2017 paved the way for such requirements.
- 1.2 As our viewing shifts from traditional broadcast services to online and on-demand content, disabled consumers are being left behind because they can't rely on on-demand programmes to carry subtitles or signing for Deaf or hard of hearing people, or audio description for blind and partially sighted people (collectively, these forms of assistance are known as "access services").

Our findings and recommendations – in brief

Our starting position is that as far as possible all audiences should be able to access on-demand services, enabling full participation in social and cultural life. We have already made recommendations to government on the basic requirements that should apply to on-demand services: 80% of content subtitled, 10% audio-described, and 5% signed. Government has asked us to look in more detail at how any exemptions from these requirements should work, and at the signing requirements.

Following responses to a second consultation our further recommendations are summarised below. An asterix (*) symbol indicates where we have amended or adapted our recommended approach following our consideration of consultation responses.

Exemptions

- Content should not be exempt from the requirements simply because the same content was not required to provide access services when it was broadcast.
- Providers should be exempt from the requirements where they have made reasonable endeavours to provide access services but have been prevented from doing so by significant technical or operational obstacles. Such exemptions should be judged on a case-by-case basis.
- *Exemptions on the grounds of low audience size/benefit should be made for services with fewer than 200,000 monthly unique viewers (expressed as 0.5% monthly VOD users) on a given platform. There should be flexibility for providers to demonstrate a low audience benefit using alternative measures of audience size.
- *Providers should not be obliged to provide access services when it would involve disproportionate cost, for these purposes meaning costs of more than 1% of a provider's overall turnover. We continue see this as the most workable approach but believe that regulations should also enable Ofcom to make exemptions where providers can demonstrate that the requirements would have a genuine effect on the viability of their service (for example where the costs represent a much higher proportion of turnover relevant to the provision of on-demand content).

Signing

- *Providers should have an open choice between sign-interpretation, sign-presentation and a contribution to an approved provider of sign-presented programming, taking into account Ofcom "best practice" guidelines in relation to audience benefit.
- *A two-year target for signing should be set at 2.5% to enable providers to build up operational capacity for sign interpretation.

Implementation and enforcement

- *Providers should be able to fulfil the requirements flexibly across the platforms on which their services are made available, taking into account Ofcom "best practice" guidelines as above.
- Ofcom will need increased powers to require information from providers (for example in relation to audience size).

Best Practice

Further Statement: Making On-demand Services Accessible

- True accessibility is about more than simply providing access services, which are of limited use if audiences don't know they're there or can't use them properly. *Providers should be required to indicate which of their services are accessible, via which platforms, and to ensure the quality and usability of access services, having regard to Ofcom's best practice guidelines in this area. These guidelines are currently being revised and will be consulted on.

Any regulations drawn up under the Digital Economy Act will apply only to providers of on-demand services. A truly accessible experience involves many other parties (from equipment manufacturers to platform operators). We urge all parties to work together and consider disabled consumers in the design, rollout and marketing of their products and services. For more information on Ofcom's broader work in this area see our [Accessibility and Diversity webpages](#).

- 1.3 The overview section in this document is a simplified high-level summary only. Our findings and the recommendations we are making are set out in the full document.

2. 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” websites².
- 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. Subtitling and signing help those with hearing impairment to access television, and audio description is for those with sight impairment. 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 ODPS³, 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 any requirements set out in regulations made by the Secretary of State (the “On-demand Code”). See Annex 3 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.
- 2.6 Whether or not the new regulations apply to the BBC’s ODPS is a matter for government. However, the equivalent broadcast requirements (s303 of the Communications Act 2003) do not apply to the BBC, with broader accessibility requirements addressed instead in the BBC Charter and Agreement. We would expect a similar arrangement to apply in relation to the BBC’s ODPS, in which case, as outlined in our [2021 review of BBC accessibility](#) requirements, we would consult on our proposed guidance for the BBC’s ODPS (including iPlayer) at the same time as consulting on an On-demand Code. Under the [2016](#)

¹ Whether an on-demand service is regulated by Ofcom depends on a number of factors including whether there is a person with ‘editorial responsibility’ 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.

[Agreement](#) (Schedule 3, clause 9), the BBC must observe Ofcom guidance on accessibility in relation to programmes included in its UK Public Services (including UK ODPS).

Ofcom's 2018 Recommendations

- 2.7 Following a formal request from the Secretary of State, Ofcom [consulted](#) publicly on the form of the regulations, and in December 2018 we informed the Secretary of State of the outcome of the consultation, giving [recommendations](#) on appropriate requirements. 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.
- 2.8 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).

2020 Further Consultation

- 2.9 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.
- 2.10 In July 2020, we published a [further consultation](#) seeking stakeholder views on our proposals in relation to the issues highlighted by Government. We received 19 responses in total from:
- 4 Groups representing consumers: Advisory Committee for Scotland (ACS), Communications Consumer Panel and Advisory Committee for Older and Disabled People (CCP-ACOD), RNIB, RNID⁴
 - 2 Groups representing industry: the Television On-Demand Forum (TODIF), COBA
 - 9 ODPS providers: A+E Networks, BBC, British Sign Language Broadcasting Trust (BSLBT), BT, Channel 4, ITV, S4C, Sky, UKTV
 - 1 Provider of access services: Red Bee Media
 - 3 Confidential respondents:
- 2.11 Our further consultation and this statement have been delayed due to the COVID19 pandemic, during which Ofcom put a temporary suspension on publications requiring input, in recognition of the pressures faced by stakeholders.

⁴ ACS and CCP-ACOD are both Ofcom committees. For more information, see our [website](#).

2020 changes to the definition of an ODPS

- 2.12 Following changes made by the [Audiovisual Media Services Regulations 2020](#) (“AVMS Regulations”), which came into force on 1 November 2020, a wider range of services are now likely to be regulated as ODPS under the statutory framework in Part 4A of the Act and subject to the accessibility requirements. Previously, a defining characteristic of an on-demand programme service was that its principal purpose was the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services⁵
- 2.13 As a result of these changes, we acknowledge that some providers now operating ODPS will not have been likely to respond to our consultations on accessibility. However, it is always the case that new providers will emerge and be subject to any existing regulatory requirements. We believe that a system of exemptions, as discussed in this document, will ensure a proportionate approach. We also think it likely that many services brought into scope by the new regulations are likely to be smaller online-only services which may be subject to one or more of the exemptions as outlined below.
- 2.14 The AVMS Regulations also amend the wording of the ODPS accessibility requirements that can be imposed by the Secretary of State, referring to ‘people with disabilities including, in particular, people with disabilities affecting their sight or hearing, or both’ rather than ‘people with disabilities affecting their sight or hearing or both’. The legislation still refers specifically to subtitles, audio description and signing and we have continued this focus in relation to our report and recommendations. However, we would expect our On-demand Code to consider accessibility in relation to people with disabilities more broadly.
- 2.15 In addition, the AVMS Regulations add a requirement which can be imposed by the Secretary of State, for providers of on-demand programme services to report annually to Ofcom about the accessibility of such services. As outlined at 5.51, we would expect this requirement to play an important role in enforcing the requirements.
- 2.16 Finally, the AVMS Regulations add requirements for Ofcom to encourage providers of on-demand to develop accessibility action plans with a view to continuously and progressively making such services more accessible to disabled people, and for Ofcom to provide a single, easily accessible (including by people with disabilities), online point of contact for providing information and receiving complaints regarding accessibility of on-demand programme services to people with disabilities. In our On-demand Code we will outline in more detail how we are fulfilling these requirements. See Annex 3 for the relevant amendments to the Act introduced by regulations 27 to 29 of the AVMS Regulations.
- 2.17 Following the withdrawal of the UK from the European Union, Ofcom will only regulate a service if both its head office and editorial decision-making capacity are based in the UK. Any on-demand accessibility regulations would apply to regulated ODPS accordingly. For

⁵ We have consulted on [draft guidance on who needs to notify an ODPS to Ofcom](#)

more details see our [Frequently Asked Questions](#) on linear television services and video on demand services after Brexit.

Progress in on-demand accessibility

2.18 In the absence of regulations requiring on-demand accessibility, we have seen at best modest improvements over the last four years:

a) Proportion of ODPS providers offering access services

Since 2017, the proportion of ODPS providers offering any access services on their services in the UK has increased, but only by a small amount (74.2% of given providers in 2020 compared with 71% in 2017)⁶. This increase is largely accounted for by increases in subtitling (up from 68.4% to 74% of providers) and signing (up from 10.5% to 16.3% of providers). The proportion of these providers offering audio description has gone down (from 26.3% in 2017 to 23.3% in 2020).

b) Proportion of content which is made accessible

Where ODPS providers have offered access services, there are improvements particularly in subtitling and audio description. Looking only at accessible services, 66% of content was subtitled in 2020 up from 49% in 2017, and audio description is up from 14% to 18%. But the amount of signed content has remained at around 2%, dipping to 1% in intervening years.

c) Availability of access services across different types of platform (e.g. website, set top box)

Providers are clearly expanding the platforms through which they can offer accessible services – for most types of platform the proportion of ODPS providers carrying subtitles has risen since 2017. For games consoles however it has dropped from 63.6% to 55.6% of providers. Of the other platforms, services on set-top boxes are the least accessible with 75.9% of providers making subtitles available through some kind of set top box.

Our approach

2.19 Our aim remains to inform effective, proportionate and targeted regulations which bring measurable progress in on-demand accessibility. Throughout the further analysis and recommendations in this document, we've kept in mind the following policy goals:

- a. Increase the quantity of access services across a range of on-demand services
- b. Increase the number of platforms through which on-demand services are accessible

⁶ This is measured across the 44 providers who gave us data in three of the four years since 2017. Ofcom has been collecting data on ODPS accessibility for the last five years, and before that data was collected by the co-regulator ATVOD.

- c. Through a and b, and otherwise, increase the consistency of experience for those watching programmes across broadcast and on-demand services and on different devices.
- 2.20 On-demand services present unique challenges in regulation which are not reflected in the existing broadcast requirements. Very little about the distribution of on-demand services is standardised or measurable. As we discuss below, ODPS are available across a wide range of platforms/devices (from mobile phones to games consoles to connected TVs) with no standard technology used. There is often no easy way to identify the revenue attributable to the 'on-demand' part of a service, and there are no standardised measurements of video on-demand audiences (c.f. BARB for broadcast). We need regulations which recognise and reflect these complexities but are workable, both for Ofcom and for ODPS providers, and deliver measurable progress for people with sight and/ or hearing impairments.
- 2.21 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.
- 2.22 This report should be read in conjunction with our [2018 report](#) to Government, and the published responses to our [first](#) and [second](#) consultations. 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, in this report we aim to provide a comprehensive picture of how we think the on-demand accessibility regulations could work in practice. It is Government's role to determine what is included in legislation.

Impact Assessment and Equality Impact Assessment

- 2.23 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.⁷
- 2.24 Annex 1 sets out the assumptions we have made in assessing the impact of different 'affordability' thresholds to inform our recommendations.
- 2.25 We have assessed the impact of our decisions on specified equality groups in an 'Equality Impact Assessment' in Annex 2.

⁷ 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 2018, we said that the regulations should require targets to be met for the proportion of content on ODPS which is subtitled, audio-described or signed, introduced over the course of four years (see 4.68 of our 2018 recommendations).
- 3.2 We said 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 audience;
 - b) the cost of providing the required assistance, relative to the provider's ability to pay; and
 - c) technical or operational difficulty
- 3.3 We said 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).
- 3.4 Below we consider our general approach to recommending proportionate exemptions, and go on to look in detail at potential exemptions on the grounds of audience benefit, technical or operational difficulty, and cost/affordability.

Defining platforms

The consultation

- 3.5 ODPS are delivered to consumers through a variety of means (or "platforms") as discussed in our further consultation (see 3.2). We said that exemptions need to take this into account, potentially differentiating platforms over which ODPS providers are likely to have greater control, such as their own apps (e.g. mobile apps, or apps on TV platforms) and third-party platforms over which they are likely to have less control (such as Sky, Amazon Prime).

What respondents said

- 3.6 Some respondents (Channel 4, ITV, ToDif, A+E) raised concerns that Ofcom was proposing a cross-cutting notion of a platform (e.g. "connected TVs" as a whole), rather than accounting for the development work (and costs) required to make ODPS accessible on platforms with different technical specifications (e.g. different connected TV brands).
- 3.7 In the context of audience size exemptions, Channel 4 and ITV said that the following should constitute distinct platforms (as an illustrative list): individual browsers (e.g. Safari, Chrome); individual mobile operating systems (e.g. iOS, Android); connected TV brands (e.g. Samsung/ LG); where a connected TV uses a third party operating system, the

operating system (e.g. Amazon Fire TV/ Android TV); other devices/sticks (e.g. Roku, Chromecast, Apple TV (TVOS)); versions/variants of platforms that involve significant technical upgrades or wholly separate operating systems (e.g. Sky+ vs SkyQ). In the context of audience size exemptions, ITV said that “platform” should be defined as the service/ operating system through which the user accesses the ODPS.

- 3.8 ITV also said that Ofcom should have due regard to the difference between two types of platforms:
- a) “app-based” platforms, where the ODPS provider controls the means of delivery and technical standards of the programme files, e.g. where the service is accessed through an app controlled by the ODPS provider. However, this control should not be overestimated given that the app sits on a platform that the ODPS provider usually does not control.
 - b) “bespoke solution” platforms, where the ODPS provider’s content is disaggregated into a separate “service” where delivery and technical standards of the programme files are controlled by a third- party.

Ofcom View

- 3.9 We think that for the purposes of assessing exemptions from requirements, a “platform” should be viewed as the interface in relation to which the ODPS provider has to put in substantive development work to establish access service capability. This allows us to weigh the input/investment required of providers (whether financial or otherwise) against its potential benefit to disabled consumers.
- 3.10 We would consult further on what should constitute a unique “platform” as part of developing the On-demand Code, which may change over time as technology becomes more standardised (affecting the required development work across multiple platforms). However, our current understanding is that providers are likely to incur substantive development work to make their apps accessible on various platforms with different technical standards, such as different mobile operating systems (e.g. iOS/ Android) and different connected TV platforms (e.g. Samsung/ Apple). So we broadly agree with the approach laid out by ITV and Channel 4.
- 3.11 However, we do not consider that the end platform/ devices through which the user accesses the ODPS should constitute separate platforms. For example, our current understanding is that providers are likely to incur one main development cost to make their services accessible on third-party/ bespoke solution platforms (such as Sky Go/ Amazon Prime) which are then delivered to consumers across a variety of further end platforms/ devices (for example, Sky Go is available on mobile apps/ apps on games consoles etc). Neither do we believe that development for different browsers incurs substantial costs.
- 3.12 We agree that the exemptions should take account of the differences between app based and third-party/ bespoke solution platforms. While we think ODPS providers are likely to have greater control over access service delivery on their own apps, we acknowledge that

they do not have control over the platforms on which their apps sit. We discuss this in more detail in the sections below.

Relationship to broadcast requirements

The consultation

- 3.13 Our proposed system of exemptions might require catch-up providers to make a larger amount of content accessible on their VOD services than is required under the broadcast requirements (e.g. due to having a larger number of hours in their on-demand catalogues than hours of content on their broadcast channels, or due to the affordability exemption threshold being set at a higher level – see affordability).

What respondents said

- 3.14 In their responses, consumer groups highlighted the increasing importance of making VOD content accessible: catch-up services have become an ‘integral’ part of broadcast services with more content being delivered primarily online (RNIB). There has been increased uptake of on-demand services among older viewers, who are also more likely to have sight/ hearing impairment (ACS) and be more isolated during the COVID-19 pandemic (CCP-ACOD).
- 3.15 BBC, A+E, ToDiF, and S4C said that programmes/ channels which have been exempt under the broadcast requirements should not be required to be made accessible on VOD. On-demand services attract fewer viewers (and generate less revenue), while it is relatively more expensive to provide access services on-demand (Channel 4, COBA). Channel 4 said the proposed requirements could require them to divert access service resources away from their more popular broadcast channels.
- 3.16 S4C and BBC pointed to the particular circumstances where broadcast services which aren’t subject to requirements are aggregated in a single on-demand service. S4C said that it isn’t currently possible for S4C to provide signed and audio-described content on iPlayer due to technical reasons, and more generally should not be subject to targets set for the BBC’s on-demand services when it appears on iPlayer.

Ofcom view

- 3.17 We can see the attraction of specifically aligning the broadcast and on-demand accessibility requirements: so, for example, requiring content made accessible when broadcast to be made accessible on-demand, and conversely exempting non-accessible broadcast content from on-demand requirements. This would have the direct effect of addressing the frustration of consumers who watch a programme with (e.g.) audio description on broadcast television but then find they can’t watch the rest of the series with audio description on catchup.
- 3.18 However, we strongly believe that any new regulations should take into account the ways in which consumption of content is changing, and shouldn’t assume that content continues

to be shown first on broadcast and then on-demand. Catch-up providers are increasingly providing 'VOD-first' content, partly in an attempt to compete with VOD-only providers (e.g. SVODs like Amazon Prime) which will also be covered by on-demand accessibility regulations. To avoid unnecessary complexity we believe that the regulations should treat all on-demand catalogues in the same way to provide certainty for consumers choosing between those services. See 3.104 - 3.105 below for a fuller discussion of the potential effects of our recommendation on competition.

- 3.19 In practice, according to our analysis (see Annex 1) there are very few broadcasters without broadcast access requirements who would need to provide on-demand access services under the recommended system of exemptions. Factors such as low turnover and low audiences are likely to carry over to a broadcaster's on-demand/catch-up services.
- 3.20 The situation is more complex where broadcast services are aggregated into a single on-demand service. However, it remains the case that all the aggregated content will affect factors such as audience size. Thematic/technical exemptions may also carry across to some content aggregated in an on-demand services (see Technical Difficulty below).
- 3.21 In the specific case of the BBC iPlayer, the ODPS Regulations may not apply directly (see 2.6) and obligations are likely to be set out in our On-demand Code which will be subject to further consultation. If S4C retains editorial responsibility for its content on iPlayer then any exemptions would be judged relative to the affordability or technical difficulty of providing access services to S4C, and similarly audience benefit exemptions would need to be based on the audiences for S4C content on iPlayer.

Audience Size

The consultation

- 3.22 In our first consultation/statement, we recommended that those services with very low audiences (on a given platform) should be exempt from accessibility requirements.
- 3.23 In our further consultation, we proposed that ODPS services which receive fewer than 200,000 unique visitors on average per month (0.4% of UK online individuals) on a given platform should be exempt.
- 3.24 In cases where self-reporting of 'unique visitors' is not available we said the legislation should allow for 'equivalent' measures to be self-reported or estimated by Ofcom using available data (e.g. Barb). For example, we have used confidential stakeholder data to calculate an approximate equivalent to the unique visitors threshold in terms of 'streams per month' (around 2.7 million streams per month). However, we do not believe that this should be specified in legislation.

What respondents said

- 3.25 Consumer groups (RNIB, ACS) and the access service provider, Red Bee Media, generally agreed with our suggested threshold. However, Red Bee Media said that ODPS can enable

niche content of particular interest to relatively small audiences, who will also have accessibility requirements.

- 3.26 RNID agreed with applying the exemption on a platform-by-platform basis, but were concerned that in the future the market could fragment so that there are more platforms, each with lower audiences making them exempt from requirements. RNID therefore argued against specifying an exact figure in legislation.
- 3.27 BT questioned what a fair and equal audience size reporting measure would be in the absence of a standard centralised reporting mechanism for VOD. TODIF and A+E suggested that Ofcom should be able to update its approach to measuring audience size as more reliable, standardised data becomes available and Sky welcomed a flexible approach to the metrics used to measure audience size. Sky said there may be limitations on the audience data they receive from third-party or legacy platforms or stemming from data protection legislation.
- 3.28 Some providers (e.g. Channel 4, Sky, ITV) disagreed with the proposal to use ‘unique visitors’ as an audience size metric and suggested ‘viewers’ or ‘paying subscribers’ as a more appropriate measure. ITV and Channel 4 said that ‘unique visitors’ is flawed because it captures the many visitors to their site that do not watch any content.
- 3.29 A+E, Channel 4, ITV, TODIF were worried that the unique visitor measures will be applied to cross cutting notions of ‘platforms’ e.g. ‘smart TV’, ‘set top box’ that do not share operating systems or means of delivery. They think that each form of smart TV and set top box should be defined as a different platform for the purposes of this regulation.
- 3.30 Channel 4 said that factors beyond audience size should be considered when determining potential benefit. For example, they have consulted The Digital Accessibility Centre (DAC), which showed that audience benefit is best served by focusing on platforms and devices that have native in-built features that make them accessible to deaf, blind and partially sighted viewers because these platforms are likely to have a larger relevant audience even if their overall audience size isn’t the largest.
- 3.31 ACS advised caution that programmes serving a Scottish audience may have a relatively small audience size but have significant value for that audience.

Ofcom view

- 3.32 We agree that exemptions should be applied on a platform by platform basis, and that in this context a ‘platform’ should not be interpreted as a cross-cutting description of a type of device (e.g. set top box). The principle behind an exemption on the grounds of audience size is that investment in access services should not be required in cases where it will result in benefit to only a small number of people. This is why we would consider the audiences which would be served by a distinct, substantial development investment / effort to establish access services capability (e.g. those audiences accessing via a particular brand of smart TV using a common interface, or a particular mobile operating system). We expect that the technology underpinning these platforms will become more standardised over time. In that case the definition of a unique ‘platform’ for these purposes is likely to

- change, which is something we would expect to consider (and consult on) in our On-demand Code.
- 3.33 We have considered providers' issues with the use of 'unique visitors' and agree that this metric would likely capture people that do not watch content and therefore should not be considered audience members.
- 3.34 Using confidential information from providers, we think that a threshold of 200,000 unique viewers would in practice rule out the same services (on the same platforms) as the previously suggested 200,000 unique visitors.
- 3.35 We agree that this should be phrased as a percentage of broader VOD viewing. In our further consultation (3.26-3.27) we discuss the unique challenges of producing a reliable estimate of total viewers to all ODPS. However, we believe that it may be possible to come up with an estimated figure for monthly VOD use based on known audiences for the most popular online video services. For 2020 this figure would be 42.1m people aged 15+, which includes broadcaster on-demand and SVOD services as well as YouTube, box set and pay per view services.⁸ This includes individuals watching videos which are not part of a notified ODPS but is a more accurate estimate of potential audiences to ODPS than our previous metric of all UK online individuals. 200,000 unique viewers therefore represents 0.5% monthly VOD users.
- 3.36 If a threshold needs to be specified in the regulations we would recommend that an exemption should apply to ODPS services that receive fewer than 0.5% of monthly VOD users (currently approximately 200,000 'unique viewers') on average per month on a given platform.
- 3.37 This approach is broadly in line with that recommended by the EU Commission in its [Guidelines](#) on determining exemptions from new European Works obligations. In those guidelines, low audience share is viewed as 'active users' of a particular service (e.g. paying subscribers, unique customers/accounts used for acquisition / unique visitors) relative to the total number of users of similar VOD services. However, these exemptions are for a different purpose, do not differentiate audiences on different platforms, and it is acknowledged that the situation might change in future and that alternative methods may be used. Ofcom aims to consult separately on implementation of the EU works requirements – if providers are in future required to submit information to Ofcom on audience share for multiple purposes, we would as far as possible attempt to ensure that the same submitted information could be used for all purposes.
- 3.38 With no comprehensive industry standard measurement for VOD audiences we recognise that there will be inconsistencies in how providers will be able to report audience size. Therefore, we recommend that the legislation should allow for 'equivalent' measures to be self-reported or estimated by Ofcom using available data, as outlined in our consultation. For example, BARB's '[Project Dovetail](#)' now provides information on viewing time for broadcaster on-demand services across PCs, tablets, and smartphones, plus time spent

⁸ Source: TouchPoints 2020

viewing for some non-linear services. Using confidential data Ofcom expects to be able to determine rough equivalencies between different metrics for audience reach.

- 3.39 We strongly encourage ODPS providers to consider factors beyond audience size when considering audience benefit of access services e.g. the native in-built features of a platform. However, we do not think that it would be practicable to legislate for exemptions based on these factors and consider them best covered in best practice guidelines. In 5.30-5.34 below, we discuss an approach to implementing targets which would require broadcasters to take these issues into account in prioritising accessibility on certain platforms over others. Given that the targets we are recommending for AD and signing are relatively low (10% and 5% respectively) we do not think that we are recommending ‘quantity’ over ‘quality’. For example, there remains scope for providers to prioritise provision of AD on platforms which are themselves accessible to blind and partially sighted people.
- 3.40 While we acknowledge the particular value of some smaller services to audiences, and National audiences in particular, we believe that the audience size consideration remains relevant and that such services are in any case likely to be exempt or subject to reduced requirements on affordability grounds (see Affordability). We do however recommend that exemptions on grounds of audience benefit are introduced into legislation in a flexible way that allows reconsideration of this point at a future point. Requirements relating to BBC ODPS are, as stated at 2.6, likely to be considered in our On-demand Code consultation.

Technical difficulty

The consultation

- 3.41 In the further consultation, we set out our initial views that providers should be exempt from providing access services on any platforms which technically do not support access services (i.e. via any format/ delivery mechanism).
- 3.42 We considered that providers should generally be able to provide access services on platforms largely under their control (e.g. their own apps).
- 3.43 We said the regulations should have the effect of requiring ODPS providers to make “reasonable endeavours” to provide access services on third-party/ bespoke solution platforms (e.g. platforms such as Sky / Amazon).

What respondents said

- 3.44 Respondents generally agreed that providers should make “reasonable endeavours” to provide access services across third-party/bespoke solution platforms. However, RNID argued that ODPS providers should demonstrate “best endeavours” as a meaningful deterrent to citing technical difficulty as an excuse.
- 3.45 Several respondents (e.g. RNIB, ACS) considered that platform providers need to share responsibility for distributing accessibility features. RNIB said this is particularly the case

where an ODPS is available on a third-party platform that is also owned by an ODPS provider. RNIB said that platform providers are obliged by the Equality Act to make reasonable adjustments, which would include audio description.

3.46 BT felt that content providers should hold the responsibility to create access services for their content and the responsibility of platform providers should be to surface these services to consumers.

3.47 However, one confidential respondent said that ODPS providers should not be pushing responsibility/ financial implications onto platforms.

Providers' own websites/ apps

3.48 Some providers (ITV, Channel 4) said that technical exemptions should extend to difficulties which relate to providers' own websites/ apps. ITV and Channel 4 said that ODPS providers do not control the technical standards of the platforms on which their apps are available. These platforms are regularly updated, requiring providers to update their apps to accommodate the new technical standards. Sometimes this can require significant development work and negotiations with the platform provider (Channel 4 said this work can take between 6 to 24 months).

3.49 ITV said there should be guidance around what constitutes reasonable endeavours in relation to new platform versions, or a 'grace period' for roll out on access services to these models. Channel 4 said that there should be a grace period for at least 4 years where new platforms require bespoke development (given that ongoing development work for pre-existing platforms may take precedence).

3.50 ITV said there should also be regulatory flexibility for making their apps accessible on older platform variants. It said that the benefits of updating their apps on older versions of platforms can become increasingly outweighed by the costs, as audiences migrate to new models and older platform variants rely on increasingly obsolete technology. It said that, when an ODPS provider launches access services on a given platform for the first time, the regulations should only apply to the provision of access services on the most recent model/ variant of that platform.

Assessing technical exemptions

3.51 Several respondents sought clarity on how Ofcom would assess where providers had made sufficient effort to overcome technical challenges. ToDif and A+E said that Ofcom should provide more detail on how it would assess whether the costs needed to overcome particular technical difficulties were disproportionate. ITV said that providers should not be required to spend more on providing access services on bespoke solution platforms than on their own apps, otherwise they could be at a significant competitive disadvantage in any negotiations and faced with unlimited exposure for development costs (which might result in them deciding not to provide ODPS services on that platform at all).

3.52 Several respondents (BBC, ITV, C4) considered that providers should be able to evidence "reasonable endeavours" through use of common/ widely accepted technical standards. BBC said that Ofcom should define "safe harbour" mechanisms, such as certain access

service technical formats, which providers/ platforms would be expected to support. Channel 4 said that Ofcom should seek evidence from the platforms themselves on whether they support common technical standards, rather than requiring each ODPS provider to evidence this.

- 3.53 Channel 4 said that Ofcom needs to take into account the resource/operational challenges of developing different solutions for multiple platforms at the same time. Providers should be able to set out which bespoke solution platforms they are currently prioritising, and the expected timeframes for development as evidence of making “reasonable endeavours” across platforms. Ofcom should also make exemptions where development work in relation to a particular platform has been made redundant by a platform upgrade.

Ofcom view

- 3.54 We believe that recommendations should set out the general principle of exemptions on grounds of significant technical or operational difficulty. However, given the difficulty of predicting the circumstances in which this might occur, and the likelihood that common difficulties will change over time, we think that details of such exemptions should be set out in Ofcom’s accompanying On-demand Code (subject to further consultation). This is how exemptions have worked for the broadcast accessibility requirements, where Ofcom is able to take into account “the technical difficulty of providing the assistance” and in practice allows exemption in countries where standard consumer equipment does not support audio description, for example.
- 3.55 Our current view is that we would usually expect providers to make current versions of their apps accessible, and all subsequent models developed after the regulations come into force. This should encourage providers to future proof the design of accessibility features when developing their apps. However, at the point at which providers no longer make wider updates to their app on a given platform, we would not expect that they continue to invest in making that app accessible unless there was a clear audience benefit in doing so.
- 3.56 While providers tell us that technical challenges most commonly relate to providing access services on third-party/ bespoke solution platforms, we recognise that providers do not control the technical standards of the platforms on which their own apps are available. We think Ofcom should have discretion to apply technical exemptions in a range of circumstances, including if a provider faces significant challenges to making their own website/ apps accessible.
- 3.57 We recognise that providing access services across multiple platforms is in part a question of cost/ operational work and not solely a question of technical difficulty. Our affordability threshold (see Affordability) will ensure that costs of provision remain proportionate to a provider’s ability to pay. While providers may need to spend more on providing access services on bespoke solution platforms, we think this is proportionate relative to the benefits to disabled consumers: a key aim of the regulations should be to expand provision beyond provider’s own apps (see 2.19).

Further Statement: Making On-demand Services Accessible

- 3.58 We do not consider that developing solutions for multiple platforms at the same time should in itself constitute a technical barrier – as set out at 5.30-5.34, we are recommending that providers should be able to meet the targets in a flexible manner across platforms which should enable them to roll out provision more gradually.
- 3.59 We do not think there should be blanket exemptions or ‘grace periods’ for new or bespoke solution platforms. Technical challenges in relation to such platforms may vary by provider (for example, ODPS can face unique workflow issues in relation to such platforms and have varying levels of influence over the delivery chain). We think Ofcom should make case-by-case judgements on whether a given provider has made sufficient effort to overcome technical challenges, taking account of various factors including (but not limited to) the length of time the ODPS has been available on a given platform model. In addition, we would always ensure that providers have adequate warning of expected requirements before a given calendar year (see 5.12).
- 3.60 As explained at 3.84 of our 2018 recommendations, the DEA only makes provision for regulations to apply to providers of ODPS, and not the original creators of content or the operators of platforms through which ODPS are delivered to consumers. Our understanding of the Equality Act is that the duty on service providers to make reasonable adjustments does not apply to content services. As stated at 3.98 of our recommendations, we think that Government should consider the potential for introducing commensurate obligations on content suppliers and platform operators to support the aims of these obligations on ODPS providers
- 3.61 We considered whether ODPS providers should make “best endeavours” to provide access services across platforms, but think the regulations need to acknowledge that providers only have a certain level of influence over the delivery of access services, particularly on third party/ bespoke solution platforms.
- 3.62 We therefore think that the regulations should have the effect of requiring ODPS providers to make “**reasonable endeavours**” to provide access services across their platforms. We would expect providers to submit evidence to Ofcom where they have attempted to provide the access services on particular platforms but have been unsuccessful in achieving this.
- 3.63 Our Broadcast Technology Team would be involved in assessing evidence of “reasonable endeavours” on a case by case basis. However, we also intend to include guidance in the Code to make this process as transparent as possible. For example, we might expect providers to provide evidence that they have offered their access services to platforms in common formats and engaged in negotiations with them. We do not think it is practical to specify common formats in legislation, as they may change too quickly, but would consider these issues in our On-demand Code. In consultation with providers/ platforms, we could establish a list of ‘accredited’ platforms (which support common formats) on which we would normally expect ODPS to be accessible. This should reduce the administrative burden on providers to demonstrate difficulties related to bespoke solution platforms. It should also encourage platform providers to support access services better.

- 3.64 We would also expect to exempt ODPS from providing access services on any platforms which technically do not support access services (i.e. via any format/ delivery mechanism). As above, this reflects our current approach under the broadcast accessibility rules. We might establish a list of such platforms in the Code and would not generally expect providers to apply to us for exemptions in relation to such platforms.

Particular genres/types of programming

The Consultation

- 3.65 In the further consultation, we said that there should be exemptions for providing audio description on news and music programmes. We said the legislation should give Ofcom discretion to apply exemptions for additional types of programming on a case by case basis, taking account of the benefit to audiences and/or any technical difficulties.
- 3.66 Consumer groups (RNID, CCP-ACOD) generally considered that there should be exemptions for providing audio description on news and music programming. However, RNIB said that news which subtitles foreign language content is not accessible to blind people and so should not be exempt.
- 3.67 CCP-ACOD pointed to linguistic differences across the UK and believed that where programmes are broadcast in Welsh, for example, there should be appropriate access services in the Welsh language.
- 3.68 RNIB said that any exemptions for additional programme types should be based on evidence that there is a lack of benefit for the relevant consumers. ACS said there should be robust scrutiny of exemptions for particular types of programming on technical difficulty grounds.
- 3.69 Providers gave details of additional types of programmes which they considered should be exempt: providing AD on catch-up versions of live sport (ToDif, ITV, BBC, Sky, BT), providing AD on certain quiz show formats (Sky); and providing access services on quick-turn around catch-up content, i.e. content which is made available on-demand on the same day it is broadcast. BT considered that providers should make 'best endeavours' to make certain additional types of content accessible (adult content, music videos, programmes for babies/ toddlers) where there would be benefit to audiences and on a case by case basis. In relation to our questions on implementation, BT said that 'shelf life' of content should be taken into account, for example, BT Sport short form content can be live on the platform for just 24 hours and it is very difficult to provide access services for these because of the turnaround time (24 hours to add subtitles, 3-5 days for audio description, 7 days minimum for signing).
- 3.70 In relation to applying exemptions for AD on particular genre types, ITV said that the total programme hours that fall into the exempt genres should be subtracted from a provider's total catalogue hours used to calculate the % of content that needs to be provided with AD.

- 3.71 Red Bee Media said that exemptions for particular genre types should be applied consistently across both on-demand and linear services.

Ofcom view

- 3.72 Exemptions for particular genres/types of programming might be made on the grounds that a specific access service wouldn't provide a net benefit to audiences on those programmes (e.g. audio description on music videos) or that there are technical/logistical reasons why it would be impractical to provide access services (e.g. in relation to news bulletins where there are few gaps in dialogue to enable audio description). Often both these considerations apply in part.
- 3.73 If Government believes that the regulations need to specify which types of programming should be exempt, our view is that the exemptions should only usually be made in relation to 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. This reflects our approach to making exemptions from the broadcast accessibility requirements.
- 3.74 We do not have any concrete grounds to suggest that relevant audiences do not wish for other genres listed above to be made accessible (in fact, we note research which suggests that subtitled programming is beneficial for children's literacy levels).
- 3.75 Live sport content is not automatically granted an exemption from the broadcast accessibility requirements and we do not see a reason to do so on-demand as we have seen in the past that subtitling, signing and audio description can successfully be provided on such programming. However, with fast-turnaround content which has been broadcast live, we would want the flexibility to exempt programmes on an ad hoc basis where it was not practical to repurpose access services for use on-demand in a timely fashion.
- 3.76 More generally, 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.
- 3.77 We 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. In this case, we would expect to subtract the programme hours that fall into the exempted genres from a provider's total catalogue hours to calculate the relevant target levels.
- 3.78 We agree with CCP-ACOD that access services should generally match the language of the anticipated audience. Our consultation on an On-demand Code would address this point in more detail.

- 3.79 We will consider including guidance in relation to making foreign language sections of news programmes accessible to people with sight impairment in our best practice guidelines (see Section 6).

Affordability

- 3.80 Our 2018 recommendation was that a service should be excluded from the full requirements where the service provider cannot afford them. This needs to be assessed with reference to some measure of a provider's ability to pay.

The consultation

- 3.81 In the further consultation, we set out our initial view that there should be an exemption for providers which qualify as a "small company" under the Companies Act 2006, and so are likely to have a turnover of less than £10.2m.
- 3.82 For remaining providers, based on our initial analysis, we proposed that exemptions should apply when the estimated cost of providing access services on a given provider's catalogue exceeds 1% of overall turnover. We invited further information from providers on the costs of providing access services, including in relation to the platforms by which services are delivered.

What respondents said

Small Companies

- 3.83 Respondents generally agreed that "small companies" should be exempt from the requirements. However, several industry respondents (ToDiF, Channel 4, ITV) said that providers should not be able to avoid the requirements by restructuring their group company. ITV proposed that "small companies" which form part of a wider corporate group should only be exempt if the whole group meets the definition of a 'small group' in section 383 Companies Act 2006 (and so is likely to have a turnover of less than £10.2m).

Catalogue Size

- 3.84 Several providers (Channel 4, BT,) said that the recommended targets could disproportionately affect providers with larger catalogues, particularly in relation to meeting more costly signing requirements. Channel 4 said that catalogue size is not a good proxy for its ability to pay for access services given that it is not proportionate to turnover or content spend, but rather dependent on a number of different factors including rights models and levels of VOD-only acquisitions. It said that it has a larger catalogue than other PSBs, despite generating less revenue.
- 3.85 Channel 4 argued that there should be a cap on the number of hours required by the targets (e.g. by matching requirements to the number of hours required to be accessible on a broadcaster's main linear channel or by limiting the signing quota to 5% of hours added in a year). It said that VOD-exclusive content should be categorised in a distinct way

for the purposes of the regulations: it said that it acquires large volumes of VOD-only content in one go (e.g. more than 900 hours of content from Vice) and that having to meet quotas on such content could change the commercial implications of such acquisitions and restrict the amount of new VOD-exclusive content it acquires.

- 3.86 One confidential respondent said there should be exemptions for providers with very small content libraries as it would be disproportionate for them to fund accessibility features.

Overall v Relevant Turnover

- 3.87 While charities (RNID, AHL, ACS) agreed with basing the exemptions on overall company turnover as a simple measure, the majority of industry respondents said that, for providers who offer ODPS alongside broadcast channels or other services, it would be more proportionate to base exemptions on turnover relating only to the on-demand service (“relevant turnover”). COBA and A+E said that basing an exemption threshold on overall company turnover could result in providers spending a high proportion of the turnover relating to their VOD service. COBA and A+E said it did not believe that exemptions for audience size (see above) would always protect smaller services provided by larger providers from disproportionate obligations.

- 3.88 Some providers (ToDiF, Channel 4, A+E Networks) said that a threshold based on overall turnover might affect commercial decisions about the amount of VOD content offered or the platforms through which ODPS are delivered. ToDiF said that companies may not be able to divert revenue from other parts of their business to provide access services on their ODPS.

- 3.89 Conversations with providers indicate that “relevant turnover” can be difficult to identify, particularly when VOD services are sold as part of a bundle with other services (e.g. with pay TV channels). However, several respondents (ToDiF, A+E Networks, COBA) thought that Ofcom should establish proxy measures for estimating “relevant” turnover, based on available audience and revenue data. COBA commissioned O&O Associates to develop [proposed options](#) for estimating relevant turnover for catch up providers. These include using average market revenue splits between linear and on-demand services and/or (where known) audience split between given providers’ linear and VOD services (weighted by average yields for linear and on-demand viewing).

Threshold level

- 3.90 While charities (e.g. RNID, RNIB, ACS) generally agreed with setting the threshold at 1% of overall turnover, a number of industry respondents considered that the threshold should be lower and/ or set an equivalent level to the broadcast accessibility threshold (1% of relevant turnover).

Impact on competition

- 3.91 Channel 4 and ITV raised concerns about the impact on competition with popular, global on-demand providers such as Netflix. They said that large ODPS providers should not be able to escape the requirements by recording their turnover outside the UK.

Ofcom view

Small companies

- 3.92 We think that there should be an outright exemption for providers which are “small companies” under [sections 382-384](#) of the Companies Act 2006, and so are likely to have a turnover of less than £10.2 million.⁹ This should ensure certainty and proportionality for the long-tail of small providers, while capturing large providers offering the majority of on-demand content. Our analysis suggests that providers which are not small companies provide around 90% of total hours of content across ODPS.¹⁰
- 3.93 As “small companies” are defined in legislation we do not think it appropriate for Ofcom to adopt an amended definition for these purposes. We think it unlikely that a provider would be incentivised to create a new subsidiary company as the named operator of their ODPS to avoid the accessibility requirements: the costs of providing access services are relatively low in relation to company turnover (see 3.98).
- 3.94 We think that “small groups” would likely be excluded from the requirements in any case on audience size or affordability grounds, and so believe that making an additional exemption for small companies which are part of a “small group” under section 383 of the Companies Act) would create unnecessary administrative complexity for Ofcom.

Remaining Providers

- 3.95 Disabled consumers should be able to enjoy the variety of content on VOD services with larger catalogues, including VOD-only or boxset content, as far as is affordable. There are a variety of factors which determine the costs of meeting the targets, including the number of platforms on which a given provider is available and has a sufficiently larger audience, and the rate at which content is refreshed on a service (see Annex 1). While some providers may need to make a larger amount of content accessible initially (e.g. if they offer more ‘box-set’ archived content) such providers are likely to be able to use more of such content to meet the target levels in subsequent years than providers that refresh content on their service more frequently (e.g. if they offer more pure ‘catch-up’ services). We do not agree with applying an outright exemption for providers with very small catalogues; we think any small, but popular ODPS should be in scope where affordable. But in practice, our analysis suggests that providers with very small catalogues are likely to be excluded on affordability or audience size grounds.
- 3.96 As outlined at 2.20, we need a regulatory system which is fair to all VOD providers, while also being simple to implement where possible. ODPS include a wide range of services (see 2.1 and 2.12), which generate revenue in a variety of ways, including through advertising, subscriptions and pay-per-view transactions. We have considered introducing proxy

⁹ To qualify as a small company under section 382 – 384 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

¹⁰ This was estimated with reference to information on catalogue size submitted by providers in the second half of 2019 for our access services data report.

measures for estimating ‘relevant’ turnover (including those suggested in the O&O report), but we have not identified any measures which can be applied consistently across different types of providers.

- 3.97 Our view is that the proxy measures proposed by COBA/O&O are either too blunt to capture the economic value of a VOD service (for instance, using market average revenue splits to separate linear from VOD revenue may misrepresent the turnover of more/ less profitable VOD services) or would introduce too many uncertainties into the process of assessing exemptions. For example, audience metrics are not a suitable proxy as they vary depending on a given provider’s business model and the platforms they are on – while it may be feasible to use audience metrics to estimate whether a provider is likely to be above/ below the audience threshold on a single platform (see Audience Size), there are additional complexities in aggregating such figures to reach a figure for total VOD turnover, which is likely to result in inconsistencies among any reported figures.
- 3.98 In our view, commercial decisions around acquiring content on ODPS are much more likely to be driven by the many other costs involved in expanding content catalogues, rather than costs of access service provision. Our analysis suggests that, for ODPS providers that are not ‘small companies’, the median costs of meeting the 4 year targets are low at around £450k (around 0.35% of overall company turnover).¹¹ In addition, many providers are already providing some levels of access service provision, which are likely to reduce the costs of meeting the targets further: our analysis suggests that when taking account of the current levels of provision, the median costs of meeting the 4 year targets is around £300k (around 0.2-0.25% of overall turnover).¹²
- 3.99 We continue to believe that the exemption threshold should be based on overall turnover, which represents ability to pay and is an easily available measure (currently used to assess [regulatory fees](#) paid by ODPS providers). Our analysis suggests that the threshold should be set at 1% of overall turnover: of those providers that are not “small companies” as above, 27 providers would be in scope at 1% of their turnover, 1 providers would be subject to reduced requirements (see below) and 5 providers would be exempt entirely from the requirements.¹³ As outlined above, the majority of providers should be able to meet the targets at much lower costs. However, setting the threshold at 1% should ensure we capture key popular providers (e.g. PSB catch up services, large SVODs) while in general only excluding smaller, more specialist services. Setting the threshold at this level should

¹¹ For this calculation, we’ve assumed that 50% of content is refreshed over the course of a year (and used bespoke assumptions on refresh rates for certain providers where we have additional information). For more detail on the assumptions used in our analysis, see affordability assumptions

¹² For this calculation, we’ve assumed that 50% of content is refreshed over the course of a year (and used bespoke assumptions on refresh rates for certain providers where we have additional information). For more detail on the assumptions used in our analysis, see affordability assumptions.

¹³ 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 2019 Access Services Data report. However, there are several ODPS providers for whom we did not receive data on catalogue size for our 2019 report. For these calculations, we’ve assumed that 50% of content is refreshed over the course of a year (and used bespoke assumptions on refresh rates for certain providers where we have additional information). For more detail on the assumptions used in our analysis, see affordability assumptions.

also reduce the amount of information we need from most providers to inform our cost calculations (e.g. on rates at which content is refreshed or repurposed from broadcast TV), reducing the administrative burden on providers.

- 3.100 While this threshold is higher than the broadcast accessibility threshold (which is set at 1% of relevant turnover¹⁴), there are additional costs to delivering good levels of accessibility on ODPS (since they are available over more platforms). We think these costs are proportionate relative to the benefits to consumers of making progress in achieved levels of accessibility. Moreover, our analysis suggests that the likely required spending under this threshold is broadly in line with current spending by providers who are already offering some levels of accessibility: the median costs of meeting the 4 year targets are around £450k, while we estimate median current spend to be around £600k.
- 3.101 We have received limited information from providers on ‘relevant turnover’, but think that less profitable ODPS run by larger companies are likely to be excluded from the requirements on ‘audience benefit’ grounds (see above). However, we acknowledge that there may be limited circumstances where a given provider might have to spend a high proportion of relevant turnover on access services, for instance if a given provider’s audience slightly exceeded the threshold.
- 3.102 We therefore recommend that the legislation should provide flexibility for additional exemptions where a given provider can demonstrate to Ofcom that the costs of provision could genuinely affect the viability of providing a given service (for example, by demonstrating that meeting the targets would constitute a high proportion of relevant turnover).

Impact on competition

- 3.103 We do not believe that our approach would have a significant effect on competition with global on-demand providers such as Netflix. Our recommended affordability threshold is low at 1% of overall turnover and as such unlikely to have a significant impact on providers’ ability to compete. Our calculation of costs in relation to this affordability threshold takes into account the size of a provider’s catalogue and the refresh rate – ensuring that a PSB provider (for example) should not be disadvantaged by choosing a business strategy which involved high volumes of VOD-first content, or by being held to short licence periods which affect the refresh rate of its content.
- 3.104 In any case, most global providers would be subject either to the same regulations in the UK (for example, Disney+) or to similar regulations in other countries (for example the US FCC accessibility requirements in relation to content which has previously aired on television¹⁵). Our anecdotal evidence from consumers is that Netflix, for example, already provides good levels of subtitling / audio description when viewed in the UK.

¹⁴ See 5.14 of the [TV Access Services Code](#)

¹⁵ <https://www.fcc.gov/consumers/guides/21st-century-communications-and-video-accessibility-act-cvaa>

Reduced requirements

- 3.105 In our 2018 recommendations, we said 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), reflecting the current arrangements for broadcasters.
- 3.106 We also said 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.

What respondents said

- 3.107 RNID said that providers who are unable to afford the full targets should have to provide the highest levels of accessibility they can afford within 1% of their turnover.
- 3.108 While some respondents (e.g. RNIB, , A+E, ITV) agreed with our proposal to exempt providers from the signing targets in limited circumstances, others (BT, RNID, BSLBT, CCP-ACOD) considered that it was not appropriate given that signing serves a distinct audience to subtitling and AD. CCP-ACOD pointed to the 2011 Census which found that 65% of BSL users could speak English either 'not at all' or 'not very well'. BT said that it would be better to reduce the signing targets/ BSLBT contributions rather than exempting providers entirely from providing signing.

Ofcom View

- 3.109 We think that requiring providers to provide the highest levels of reduced targets affordable within 1% of turnover would lead to spurious accuracy in our affordability assessments (particularly given that a given provider's catalogue size can fluctuate over the course of a year). It also risks reducing clarity for consumers over expected levels of accessibility.
- 3.110 We have considered whether to recommend introducing more levels of reduced requirements (e.g. setting subtitling targets at each 10-percentage point interval of the full targets), but our analysis suggests this is unlikely to result in more providers being able to afford a higher level of requirement¹⁶
- 3.111 We also looked at whether those providers unable to afford the reduced target levels could afford to meet the targets across a smaller number of platforms. Our analysis suggests that only two more providers would be subject to requirements if they only had

¹⁶ Our analysis shows that the 5 providers exempt entirely from the requirements with the lowest subtitling targets set at 1/3 of the full requirements would also be exempt if the lowest subtitling targets were set at 10% of the full targets. For this calculation, we've assumed that 50% of content is refreshed over the course of a year (and used bespoke assumptions on refresh rates for certain providers where known). For more detail on the assumptions used in our analysis, see affordability assumptions.

to make a subset of their platforms accessible.¹⁷ Therefore, we do not think that introducing more levels of reduced requirements would significantly affect the amount of accessible content on ODPS.

3.112 Our recommended targets for AD and signing are already much lower than the subtitling requirements (given that they serve smaller audiences and are more expensive to provide). Our affordability exemptions will ensure proportionality for smaller, thematic services.

3.113 We appreciate that signing serves a distinct audience to subtitling and our updated analysis suggests that introducing a signing exemption may not bring any more providers in scope of the requirements.¹⁸ As explained in Section 4, we also recommend giving providers flexibility to choose a lower cost signing option by funding an approved provider of sign-presented programming on-demand rather than providing sign-interpretation on their own services. Given these factors, we no longer think it appropriate or necessary to reduce signing obligations through an additional signing exemption.

¹⁷ NB: As set out at A1.22, we believe that our analysis underestimates the number of platforms which are likely to be exempt anyway on grounds of audience size or technical difficulty. For this calculation, we've assumed that 50% of content is refreshed over the course of a year (and used bespoke assumptions on refresh rates for certain providers where known). For more detail on the assumptions used in our analysis, see affordability assumptions.

¹⁸ Our analysis shows that the 5 providers exempt entirely from the requirements with the lowest subtitling targets set at 1/3 of the full requirements would also be exempt if they had to meet the full subtitling and AD targets but didn't have to provide any signing. For this calculation, we've assumed that 50% of content is refreshed over the course of a year (and used bespoke assumptions on refresh rates for certain providers where known). For more detail on the assumptions used in our analysis, see affordability assumptions.

4. Signing

- 4.1 Our 2018 recommendations and further consultation point to the importance of providing accessible content for the 87,000¹⁹ Deaf people in the UK using British Sign Language (BSL) as their preferred language. Television broadcasters with the largest audiences currently have to provide 5% of their content with sign-interpretation²⁰, while other broadcasters with big enough audiences have the option instead to provide sign-presented²¹ content or contribute to the British Sign Language Broadcasting Trust²² (BSLBT).
- 4.2 In our 2018 Recommendations, we suggested a similar approach on ODPS, with targets for sign-interpreted/ sign-presented content, and arrangements set out in our Code for ODPS providers to propose and use alternative arrangements if these served the relevant audiences better. In its 2019 letter to Ofcom, Government requested that Ofcom provide further recommendations on the conditions for establishing alternative arrangements for signing.

The Consultation

- 4.3 Our further consultation considered a number of approaches and recommended that all providers 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. We said that this approach 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.²³
- 4.4 Our consultation also considered two options for determining the required quantity of sign-presentation or financial contribution to alternative arrangements²⁴ and expressed a preference for Option A:
- a) **Option A:** Reflect the levels of requirement set for broadcast television. This builds on an established system for sign interpreted and presented content and could enable those with broadcast requirements to utilise the accessible programming they have already created/acquired. But requirements would need to be scaled in relation to catalogue size.

¹⁹ [British Deaf Association](#) figures

²⁰ Sign-interpretation is when a signer visible on one side of the screen translates a programme into sign-language (e.g. on national news).

²¹ Sign-presentation is when programmes are presented entirely in sign-language (i.e. all the presenters or characters on screen use sign-language).

²² The BSLBT 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)

²³ For more detail see 4.9 to 4.12 of our further consultation

²⁴ See 4.13 to 4.24 of our further consultation

- b) **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.

What respondents said

- 4.5 Both industry respondents (Sky, BT, ITV, ToDif) and consumer groups (RNID, ACS) supported our proposal to give providers a choice between providing sign-interpretation/ sign-presentation and/ or funding an approved provider of sign-presented programming on-demand. However, a number of respondents (UKTV, Sky, BSLBT, Channel 4, ToDif) pointed to potential unintended consequences for BSLBTV which may result in less sign-presented programming being available for BSL users. There was a concern that broadcasters who currently make a contribution to BSLBT would be penalised by a replica contribution in relation to their catch-up services, and may choose to stop broadcast BSLBT contributions and instead to create sign-interpreted content for broadcast and then repurpose that on-demand, at reduced cost. Some (BSLBT, Sky) suggested that broadcasters' existing contributions to BSLBT should count as credit towards meeting the on-demand requirements. BSLBT said that alternatively on-demand providers could collaborate with BSLBT to drive greater awareness and viewing of BSL Zone programmes.
- 4.6 Channel 4 and BT expressed concern that the targets penalise providers with larger catalogues. Channel 4 argued that they would be the PSB that had to provide signing on the most hours of content, despite having smaller revenue than BBC and ITV. UKTV said that if contributions fluctuate in line with catalogue sizes this would not provide the level of certainty (for either providers or an approved provider) that currently exists in relation to broadcast contributions to BSLBT.
- 4.7 Channel 4 also argued that third party signing providers would not have the capacity to provide the signing necessary for all ODPS services to meet their targets within the 4-year target period.
- 4.8 In terms of the exact level of requirements, respondents were split between Option A (e.g. BBC, UKTV, ACS, RNID) and Option B (A+E, ITV). RNID supported an extension to the current BSLBT arrangement. Others argued for greater flexibility, for example ITV said that there is no need to reflect broadcast requirements which serve different audience needs and that Ofcom should consult on any methodology for considering sign-presented/ sign-interpreted and equivalent contributions to an approved provider of sign-presented programming on-demand.

Ofcom View

- 4.9 Given the lack of available evidence to the contrary, we continue to aim for regulations which result in a mix of signed content (sign-interpreted and sign-presented) available to BSL users. We continue to believe that an extension to the current arrangement (under which broadcasters have put in place alternative arrangements with BSLBT) is appropriate

given its track record in providing a means for broadcasters to provide sign-presented content. While we recognise that there are other ways in which accessibility to BSL users can be achieved (e.g. increased prominence of existing BSL interpreted content) this is something we would expect all broadcasters and on-demand providers to consider in any case and will set out further in our On-demand Code.

- 4.10 In order to incentivise a mix of content, the levels of provision need to be set at an appropriate level. We believe that a continued mix of provision is most likely to be achieved via a modified Option A, where the option of providing sign-presentation matches the number of hours programming specified in the broadcast accessibility Code (but scaled to catalogue size for ODPS). Were we to recommend a level equivalent to the cost of providing 5% sign-interpretation, we believe that this would result in such a small amount of sign-presentation being available that audiences would not perceive it as an adequate substitute. Annex 1 therefore models the provision of 5% sign-interpreted content or 0.2% sign presented content (equivalent to 75 mins per month in relation to a year's broadcast schedule of 8760 hours).
- 4.11 We agree in principle that it is unfair – and may result in unintended consequences - to require those broadcasters already contributing to BSLBT to match those contributions in relation to their catch-up services. We have therefore looked at the impact of setting a lower level of contribution to an approved provider of sign-presented programming on-demand for these broadcasters/providers, reflecting the lower costs of 'repurposing' other access services.
- 4.12 Annex 1 includes a comparison of the estimated costs for broadcasters of providing either sign-interpretation on their broadcast and on-demand services, or alternative contributions on both. With an on-demand alternative contribution set at a third of that proposed for other providers, we do not believe there would be an incentive to discontinue broadcast BSLBT contributions (particularly given their relative administrative ease). Setting contributions at a third of the full contribution would also reflect our estimated typical ratio of the cost of repurposing sign-interpretation relative to creating sign-interpretation.
- 4.13 We also considered a 'top up' approach to contributions for those who already make broadcast contributions to BSLBT, where existing alternative arrangements could be extended to enable providers to pay only the amount necessary in addition to their broadcast contribution to meet either the full alternative contribution or the full cost of creating 5% sign interpretation. However, this would result in some broadcasters paying no additional contribution for their on-demand services, which we do not believe is fair given that the contribution is in relation to a separate service and other providers (e.g. VOD-only) will be making significant contributions.
- 4.14 We strongly believe however that contribution levels under alternative arrangements should not be set out in the legislation but in Ofcom's On-demand Code. This would be subject to further consultation and would ensure that incentives could keep pace with available knowledge regarding BSL user preferences.

Further Statement: Making On-demand Services Accessible

- 4.15 We believe that the approach outlined here (and modelled in Annex 1) would provide genuine flexibility for broadcasters while ensuring that signing produced for broadcast use can be repurposed where possible. We agree with ITV that legislation should not require broadcasters to reuse sign interpretation on their on-demand services, as this is not always practical (for fast turnaround live content). However, we think it likely that providers will usually repurpose such content, and the legislation could specify that a provider should usually make content available with sign-interpretation where this has been the case on broadcast, where practicable.
- 4.16 Under this approach we believe that providers should be required to have regard to Ofcom's Best Practice guidelines when choosing an approach to signed content. Again, this would allow choices to keep pace with available research, including Ofcom's forthcoming research on BSL user preferences.
- 4.17 We continue to believe that signing targets/contributions should be scaled to catalogue size, as for the other access services. Larger catalogues providing a greater range of choice for consumers should do the same for disabled consumers unless economically unviable (in which case affordability exemption would apply – see Section 3, Affordability). In any case, our modelling suggests that those with larger catalogues would be able to afford to provide the required sign-interpretation or contributions to an approved provider of sign-presented programming on-demand.
- 4.18 We do not believe that there is likely to be a lack of signing capacity in the industry as suggested by Channel 4 – this is not a view we have seen reflected in conversations with access service providers, and under our proposals some providers would choose to fund an approved provider rather than provide new sign-interpreted content. If there were to arise any genuine operational issues, we would consider these under a technical exemption (see Section 3, Technical Difficulty).
- 4.19 We would expect our On-demand Code to set out the process of approving and reviewing any agreed provider of sign-presented programming on-demand, alongside levels of contribution.
- 4.20 We will consider including guidance around promoting awareness of any agreed providers of sign-presented programming as part of our best practice guidelines (see Section 6).

5. Implementation and enforcement

- 5.1 Throughout this document we have highlighted the ways in which on-demand services differ from broadcast television. In implementing and enforcing targets we need to take into account similar considerations, such as the variable size of on-demand catalogues and the variety of platforms through which they are available.
- 5.2 Given this and the lack of standardised measurement for e.g. on-demand audiences, enforcing any requirements will also require providers to submit information on a regular basis to Ofcom.
- 5.3 With the exception of the implementation timescale, we would not expect these issues to be detailed in any regulations. We have considered them here to provide a complete picture of how requirements could work in practice. This section discusses the timescale for implementation and how Ofcom's information gathering powers will need to be applied and extended in order to enforce the proposed requirements.
- 5.4 In order to provide a complete picture of how requirements could work in practice, we also consider the processes that are likely to be involved in implementation and enforcement. We would not expect these issues to be detailed in any regulations and further details will need to be laid out in our On-demand Code, subject to further consultation.

Implementation timeframe

The Consultation

- 5.5 In our original recommendations to government we suggested that the regulations set out 2-year and 4-year targets as follows:
- 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
- 5.6 We said that these targets could be supplemented with further advisory targets for the first and third years, which we would include in our On-demand Code, to assist providers and Ofcom in monitoring progress towards meeting the statutory targets.

What respondents said

- 5.7 While we did not ask a specific question on the timeframe for implementation, a number of providers again stated that they believed the timeframes are too short (TODIF, A+E, COBA), particularly in relation to large catalogues (Sky) and for smaller ODPS in the light of the COVID19 pandemic. Providers also emphasised that there will need to be an adequate

notification period before the first year of provision, to allow providers to set up workflows and agree technical requirements.

5.8 The RNID welcomed additional advisory targets, particularly for first year of regulations, which it felt would create the expectation that access services will be increased proportionately and create a reputational risk for companies that seek to delay meeting the targets until the second and fourth years.

5.9 The BBC said that there are limits to the ability to reuse existing access services content and there may also be rights issues which affect the republishing of signed content.

5.10 Channel 4 and ITV wanted confirmation on the 2-year interim signing target, which they suggested should be lower than 5%, to enable them to plan any required changes to their processes and to reflect resourcing priorities at access services suppliers.

Ofcom view

5.11 As set out in our original recommendations, we believe the timeframe for implementation on ODPS should be considerably shorter than that allowed for broadcasters, given the increased access services infrastructure now in place. The Digital Economy Act was passed in 2017, with our original recommendations to government in 2018, which means that providers have already had four years advance warning of likely requirements.

5.12 Given the delays to this process, and the increasing popularity of on-demand services²⁵, we believe that instead of applying from the second and fourth year anniversaries of when the regulations come into effect, the targets should apply to the second and fourth years of operation following introduction of the regulations, with at least 6 months' notice for those providers subject to the regulations. So, for example, if the regulations come into force in March 2022, giving sufficient notice to providers, the first year of non-statutory targets would be 2023 with a requirement to meet the two year targets in the calendar year 2024 and the four year targets from the calendar year 2026.

5.13 Looking at the 2-year interim signing target, our modelling (see Annex 1) suggests that only one provider would in practice be able to afford (within 1% of turnover) the requirements including a 2.5% interim signing target but not with a 5% interim target. However, we acknowledge that an extension of signing requirements from broadcast to on-demand services also has operational implications. It potentially requires systems to be put in place for providers to employ larger numbers of sign interpreters, for example. We therefore agree that a second year 2.5% interim target is appropriate.

²⁵ For example, the proportion of UK households who subscribe to any SVoD service has increased from 20% in Q1 2015 to 53% in Q1 2020. Source: BARB Establishment Survey, Q: "Do you, or does anyone in your household, subscribe to the following..." Note: Any SVoD is any of the following - Netflix, Amazon Prime Video, Now TV or DisneyLife upto Q1 2020

Applying targets to on-demand catalogues

The Consultation

5.14 On-demand catalogues are refreshed at different rates (see Annex 1), with varied reliance on archive / back catalogue content which remains on the service from year to year. In our consultation, we suggested that 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, to ensure that a mix of archive and new content is made accessible.

What respondents said

5.15 While the RNIB and BSLBT agreed with our approach to implementation, a number of industry respondents disagreed with some elements (including UKTV, Channel 4) and the BBC requested that we clarify how the regulations would define the requirement for providers to refresh provision of access services at the same rate as content.

5.16 Two respondents (confidential respondent, Channel 4) suggested that it was not fair to peg access service requirements to refresh rates when some UK operators are bound by short licence periods by Ofcom's terms of trade and therefore over the course of a year present large amounts of newly refreshed content. Channel 4 suggested that archived box set content may in any case be more popular with audiences and therefore a priority for access services.

5.17 UKTV was similarly concerned about the cost of refreshing access services at the same rate as content more generally, given that it tends to make all linear content available on-demand as long as it has the rights to do so.

5.18 UKTV also said that it is possible that a linear broadcaster has a higher proportion of audio-described and signed content in the first part of the year and that the fact that titles would be available on-demand for the rest of the year without being refreshed should not count against an ODPS. Requirements for regular refreshing of access services could lead to providers having to audio-describe or sign-interpret a higher percentage of their content just to meet the requirement.

Ofcom view

5.19 Given the concerns of providers we agree that providers should not be required to refresh access services at the same rate as content more generally. We do not believe such a requirement would be simple to enforce given the difficulty of estimating refresh rates (see 5.42 - 5.43). We also think that providers should be given the flexibility to prioritise new or old content depending on their own knowledge of their audiences' preferences.

5.20 We will include advice on this issue in our revised Best Practice Guidelines and would strongly encourage providers not to fulfil quotas by relying primarily on archived content which remains the longest time in the catalogue.

- 5.21 In our estimated costs (Annex 1) we have assumed that providers will in practice refresh access services at a similar rate to their overall content.

Applying targets across multiple platforms

The Consultation

- 5.22 For ODPS providers with services available through multiple platforms, we proposed two options for how targets could be met:
- 5.23 **Option 1** – The Flexible Approach: the regulations could allow providers to meet the targets in a flexible manner across their non-excluded platforms²⁶, i.e. to offer higher/lower levels of accessibility on individual platforms, while providing the required levels of accessible programming overall.
- 5.24 **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.
- 5.25 We expressed a preference for Option 2 on the grounds that this would encourage earlier provision of access services across a wider range of platforms, which should be a key goal for any regulations (see 2.19 above).

What respondents said

- 5.26 Respondents representing consumers (RNID, ACS, ACOD/CCP) generally supported the prescriptive approach (option 2). ACS and ACOD/CCP said that this allows people to choose platforms based on programming content rather than availability of access services. RNID said it provides more certainty for consumers who are unlikely to switch services, although noted that this approach becomes less useful if a large number of platforms are exempted on other grounds (e.g. technical difficulty).
- 5.27 Both ACS and RNID suggested that either approach needs to be supplemented with better pre-purchase information for consumers on which access services are available on which services / platforms.
- 5.28 ODPS providers who responded on this point (UKTV, TODIF, BT, A+E, Channel 4, ITV and a confidential respondent) all preferred a flexible approach (option 1). They felt that this approach makes allowance for the variables in ODPS distribution (e.g. BT) and would be a more practical one for providers setting up workflows and agreeing technical requirements with platforms (Channel 4, A+E, TODIF, UKTV). They also thought it would be more responsive to additional audience benefit considerations, for example allowing providers

²⁶ i.e. all platforms which have not already been excluded i.e. on grounds of audience size or technical difficulty. See Section 3 above.

to over-deliver on the most popular platforms or those which are known to have a particularly accessible consumer interface. A+E and TODIF acknowledge that after a given period Ofcom should review the resulting accessibility across a range of platforms.

- 5.29 Both Sky and Channel 4 disagreed with the suggestion that fixed targets would encourage cooperation between providers and platforms. Sky felt it was more likely that costs to expand to new platforms would reduce general operational investment in providing access services.

Ofcom view

- 5.30 While we remain committed to ensuring that as many platforms as possible are made accessible, we don't believe that in practice the prescriptive and flexible approaches will result in radically different content being made available with subtitles. We believe that one of the key obstacles to expanding provision onto new platforms is the issue of interoperability and technical difficulty, which we discuss above at 3.41 - 3.64, and may lead to certain platforms being exempt (in the short term) under either approach. With these platforms excluded, we believe that once providers have created access services for their content, there are financial incentives to making this available as widely as possible across platforms to maximise the return on this investment (see A1.13) In addition, our cost estimates (Annex 1) suggest that those providers who will be subject to requirements can afford to meet targets across their non-exempt platforms. For subtitling at the four-year target (80%) this leaves limited scope for neglecting some platforms entirely and yet still meeting the target across all content.
- 5.31 We have therefore changed our recommendation and now propose to take a flexible approach (option 1) which we hope will allow providers to bring their own expertise to bear in prioritising some content and platforms based on audience benefit. This would also mean that for those access services with lower targets (audio description and signing) these access services will not be spread too 'thinly' across multiple platforms. We acknowledge that in the short term this may mean that consumers are restricted to certain platforms in order to ensure maximum accessibility.
- 5.32 We do not believe that this approach should necessarily be specified in any regulations. It may be the case that a flexible approach is preferable initially but that as the requirements become embedded (with more content and platforms carrying access services) a fixed approach may become more appropriate.
- 5.33 As with other aspects of the regulations and implementation, we believe that the flexible approach needs to be underpinned by an obligation on ODPS providers to have regard to our Best Practice guidelines which will set out the basis on which certain platforms might be prioritised.
- 5.34 We also recommend that legislation sets out an obligation on ODPS providers to provide information to consumers about which services are accessible and on which platforms.

Process for establishing targets and exemptions

The Consultation

- 5.35 We said that targets should be implemented on a calendar year basis, in line with the targets for broadcasters²⁷.
- 5.36 As outlined in our 2018 Recommendations (5.6-5.8), we said that not all exemptions could be determined in advance of the year, 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).
- 5.37 We said that before each calendar year, we would expect to:
- a) Estimate audiences accruing to services on given platforms and exclude as appropriate on the grounds of audience share and established technical difficulty.
 - b) Estimate costs of provision to assess whether or not a given provider should be exempt from requirements on the basis that they cannot afford the full or reduced requirements within 1% of their turnover.
- 5.38 We asked respondents to comment on the cost assumptions set out in Annex 2 to our further consultation, which took into account factors including:
- Costs of creating and repurposing each access service
 - 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 (and therefore incur lower costs);
 - The proportion of ODPS content which a given provider is likely to replace each year (rather than archive), which affects the amount of new content on a service.
 - The proportion of content repeated across different branded services offered by the same ODPS provider (e.g. between Sky Go and Sky On-Demand).
- 5.39 We asked providers whether they would be able to provide us on a regular basis with information to assist with cost estimates and assessment of audience size. We said that if some providers are unable to provide this information, we may need to use estimated averages. Our initial view, for example, was that it would not be practical or proportionate to ascertain the degree to which different branded services share content.
- 5.40 At the end of the calendar year, we said we would expect to invite providers to explain why they had not met the expected targets and apply for retrospective exemptions.

²⁷ See our [TV Access Services Code](#)

What respondents said

- 5.41 Respondents were split on whether they could provide the relevant information, as follows:
- a) Catalogue size (five providers)
 - b) Number of platforms on which the service is available (five providers)
 - c) Relevant costs of establishing access service functionality on a given platform (four providers). BBC commented that it is difficult to provide cost information when this functionality has to date been built over years and costs shared across platforms. BBC, ITV and Channel 4 said that it is hard to generalize about costs in relation to bespoke solution platforms.
 - d) Relevant costs of creating / repurposing each access service (four providers)
 - e) Proportion of content which a provider is likely to replace each year rather than archive (six providers). Sky questioned how this would be measured in relation to content which is repeatedly put on and off a service.
 - f) For catch-up providers, the proportion of content likely to be repurposed from broadcast channels (five providers).
 - g) Proportion of content which is repeated across different branded services (four providers)
- 5.42 In addition, Sky said that it could provide estimates but that it would be very difficult to confirm them with any accuracy.
- 5.43 Other broadcasters (e.g. Channel 4, Sky) pointed to the resource implications of providing this information. However, Channel 4 also pointed to the variations in ODPS (e.g. in the proportion of content which is refreshed over a year) and so discouraged Ofcom from using estimated averages. Others (Sky) said that Ofcom should only require data which is crucial to its work: the proposed process was complex and broadcasters would need clarity, guidance, and time in order to provide Ofcom with the required information.
- 5.44 Providers including A+E and TODIF asked that Ofcom carefully consider individual circumstances should a provider fail to reach a target, particularly where there have been issues relating to time consuming or costly technical development. ACS agreed that ODPS providers should not be held to a target set at the start of the year if their business model had changed significantly. Channel 4 agreed with the end-of-year process but commented that it may provide less certainty for any provider of alternative signing arrangements.

Ofcom view

- 5.45 As we say at the start of this document, the process of implementing and enforcing any regulations should be nuanced enough to reflect the realities of ODPS provision while avoiding unnecessary complexities for both Ofcom and ODPS providers. This reflects the approach to implementing the broadcast requirements where key cost information is

obtained and averaged without an attempt to take into account every attendant cost for every broadcaster.

- 5.46 **In advance of the calendar year**, Ofcom will use publicly available information to determine exemptions for small companies (based on the previous year's Companies House submissions). We will use the previous year's access services submissions to establish catalogue size and the number of platforms on which a given service is available. Ofcom would also expect to invite information from providers in relation to known technical difficulties or cases where type/genre of content on a service makes achieving the relevant targets impracticable. We would also invite submissions on audience data in relation to the previous year for the purposes of assessing audience size exemptions.
- 5.47 Based on what providers have told us, we think it is reasonable to ask all providers every two years for information / estimates on
- a) costs of creating/repurposing access services
 - b) any updated information on costs of establishing access service functionality on a given platform.
- 5.48 In addition, we may ask every two years for the following information in borderline cases where different assumptions may affect eligibility for exemptions:
- a. Proportion of content which a provider is likely to replace each year rather than archive
 - b. Proportion of content likely to be repurposed from broadcast channels
 - c. Proportion of content repeated across different branded services
- 5.49 Based on the above sources of evidence Ofcom would expect to be able to determine exemptions from the requirements. In relation to affordability exemptions, we would expect to look at affordability projections across a two-year period i.e. can the provider afford to provide access services in a sustainable fashion rather than falling in and out of the requirements?
- 5.50 As is the case with the broadcast accessibility requirements, Ofcom would give providers six months' notice of their requirements for the following calendar year. At this point, providers would be free to approach Ofcom and clarify any specific circumstances which they believe Ofcom has not taken into account.
- 5.51 **At the end of the relevant calendar year**, providers would report to Ofcom on the levels of accessibility achieved and measures taken to ensure quality and usability of their access services. The Communications Act 2003 (as amended by the DEA and the AVMSD Regulations) gives the Secretary of State powers to impose requirements that providers of ODPS report annually on the accessibility of their services. Our expectation is that this will be required in any new regulations.
- 5.52 At the end of the relevant calendar year, providers could apply for retrospective exemptions, which would be granted if the provider has demonstrated (for example) that they have since qualified as a small company, or there has been a significant change in

circumstance across the year (e.g. change in catalogue size which affects affordability) or failure of platforms to carry access services despite provider demonstrating 'reasonable endeavours'.

- 5.53 At present, s368O of the Act allows Ofcom to require the provision of information from ODPS providers for the purposes of an investigation to determine a breach of a requirement or a failure to notify. We believe that the additional information at 5.48 above could be requested from providers on a voluntary basis and that many providers would be incentivised to return the information for the purpose of obtaining appropriate exemptions.
- 5.54 Our current powers would not allow us to require providers to supply this or the information detailed at 5.47 to Ofcom. This means that we would not be able to obtain the most consistent and accurate set of data on costs across all providers. To provide clarity and certainty in relation to this process Government should consider incorporating additional information gathering powers in any regulations.

6. Best Practice

What we proposed

- 6.1 Access services targets are of limited use if the resulting access services are of low quality or hard to find and use. Our 2018 statement considered the quality and usability of access services (see 4.57 to 4.67) and recommended that ODPS providers are required to report on measures they have taken to ensure that the required access services are of sufficient quality and can be used effectively by their intended audiences. We anticipated that Ofcom's On-demand Code would set out guidance on ensuring usable, high quality access services.
- 6.2 Although our further consultation did not ask specific questions in this area, some respondents referred to issues around quality and usability.

What respondents said

- 6.3 ACS expressed concern that service quality may be hindered by technical difficulties, for example the ease of accessing accessibility menus or the speed at which subtitles are refreshed during a programme.

Ofcom view

- 6.4 Throughout this document we have suggested that providers should be required to have regard to such guidance as Ofcom may publish in relation to the quality and usability of access services (referred to as 'best practice' guidelines). Specifically, we have said this applies in relation to:
- Indicating access services availability
 - Choice of signing option
 - Choice of provision across multiple platforms (e.g. which platforms to prioritise)
 - Making foreign language sections of news programmes accessible to people with sight impairment
 - Choosing which content to make accessible (e.g. in relation to new vs. archived content)
- 6.5 Our existing [best practice guidelines](#) are currently under review and will be expanded to cover issues specific to on-demand services and updated to reflect current research into best practice.
- 6.6 In general, we would expect the guidelines to describe goals rather than being prescriptive about the way those goals are achieved. This may mean, for example, that different ways of delivering subtitles/captions can be used in some circumstances where audience benefit is clear.

- 6.7 As we've said, we recommend that ODPS providers are required to report on measures they have taken to ensure that the required access services are of sufficient quality and can be used effectively by their intended audiences.

A1. Affordability/ Signing Assumptions

Introduction

- A1.1 This annex sets out the assumptions and calculations that have informed our analysis in relation to affordability exemptions (see Section 3, Affordability) and alternative signing requirements (see Section 4). It should be read in conjunction with the Impact Assessment which accompanied our 2018 [recommendations to government](#), which examines the impact of our broader proposals.
- A1.2 We have estimated likely costs based on information provided to us in response to both our [first](#) and [second](#) consultations, conversations with providers and our knowledge of regulated ODPS.

Stakeholder Responses

Requested Information

- A1.3 In our further consultation, we invited further information from providers on the costs of providing access services, including in relation to the platforms by which services are delivered. We received information from 10 providers which has informed our updated cost assumptions below (see Figure 1).
- A1.4 We also requested the following additional information from providers on:
- The proportion of a given provider's ODPS catalogue which is replaced over the course of a month/ year rather than archived (received from 10 providers)
 - For catch up providers, the proportion of a given provider's ODPS catalogue which is repurposed from broadcast TV over the course of a month/ year rather than archived (received from 10 providers)
 - For providers with more than one ODPS, information on the hours of unique content provided across their ODPS over a given year (received from 3 providers)
- A1.5 We also asked providers if they could provide any information on the amount of advertising/ subscription revenue they would expect to gain from providing access services on their content. We received responses from 6 providers who said they did not expect to see any revenue gains from adding access services or that it is not possible to measure whether there are any gains.

Comments on Cost Assumptions

- A1.6 In the further consultation, we also asked providers if they had any comments on the assumptions used in our affordability calculations. Channel 4 said we had overestimated the extent to which providers of catch-up services can repurpose content broadcast with access services, as they provide a growing amount of 'VOD-only' content. Channel 4 also

objected to our assertion that the majority of costs are incurred in creating or repurposing access services, rather than setting up access service capability on new platforms.

- A1.7 More generally, providers pointed to the complexity of estimating costs. The BBC said that costs are likely to vary by provider depending on their technical architecture and approach to provisioning (e.g. insourcing versus outsourcing). BBC, ITV, and confidential respondent said that it is particularly hard to predict costs for providing accessibility services on bespoke solution platforms, which are unique to a given platform. ITV and confidential respondent cautioned against taking too strict an assessment of likely costs as it is hard to predict future platform technology.
- A1.8 Two confidential providers pointed to the difficulty of isolating all costs related to the provision of access services. One said that there are costs not captured within Ofcom's calculations, such as costs resulting from internal system upgrades/ changes in contractors or costs for monitoring, reporting and compliance.

Our approach

- A1.9 Our aim in assessing likely costs is to inform regulations which ensure measurable progress in the accessibility of ODPS, while being proportionate, flexible and fit to apply to a diverse and developing video on-demand industry. However, we acknowledge that estimating costs is not straightforward and that costs are likely to change over time: we are recommending that the legislation includes a review clause after 4 years and that levels of alternative signing requirements are **not** included in legislation (see Implementation and Signing sections).
- A1.10 In general, we have taken averages of likely key costs in making these estimates. We have not included very small costs or costs where we do not have sufficient information as we want to avoid spurious accuracy (see Figure 1 for more detail). In practice, the process of assessing applicable requirements should give providers an opportunity to report to us any specific circumstances which they believe we have not taken into account (see Implementation).
- A1.11 Taking account of responses, we have made some changes to our consultation assumptions relating to on-demand catalogues in order to more accurately assess the impact of likely exemptions. For example, we have modified our assumption on the proportion of content which is likely to be repurposed from broadcast TV for catch up services (from 100% to 90% - see Figure 1). We have also used bespoke assumptions on (a) and (c) above where known for given providers. For providers for whom we do not have bespoke information, we have modelled both an upper and lower limit of likely proportions of refreshed content (see Figure 4 for more detail).
- A1.12 We agree with Channel 4 that over the course of a single year the combined cost of setting up access service capability across multiple platforms may be greater than the cost of creating access services. However, as these establishment costs will not be incurred every year our modelling amortises platform costs over five years (see Figure 1). Our information

suggests that the annualised established costs are significant but not greater than the cost of creating / repurposing access services.

Cost assumptions

A1.13 We have estimated the impact of potential affordability exemptions and alternative signing requirements for ODPS providers who are not “small companies” under the Companies Act 2006 (see 3.92). In order to do this, we have used:

- a) **The costs of providing subtitles/ audio description/ signing, 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.
- 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
- e) **Audience numbers from larger ODPS providers,** in order to exclude some platforms on the basis of low audience size (see 3.32) and thereby more accurately assess the impact of affordability exemptions. See Figure 2 for more detail.

Figure 1: Cost categories and assumptions

Cost category		Estimates / sources (all CONFIDENTIAL)	Assumptions
Development	Internal system development costs, i.e. to develop the capacity to store access services files	✕	The information we have on these costs suggests that they are relatively small and not likely to have a material impact on our overall cost estimates. We have not included these costs as we want to avoid spurious accuracy. We also believe that some estimates of development costs below will already have included these costs [✕]

	<p>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.</p> <p>Platform updates – once access services are available on a particular platform, that platform can still change, requiring additional expense to adapt access services.</p>	<p>App-based platforms (e.g. providers own websites and apps)</p> <p><i>Subtitles only</i></p> <p>✂</p> <p><i>Audio description only</i></p> <p>✂</p> <p><i>Signing only</i></p> <p>✂</p> <p><u>Average estimated cost per app-based platform = £✂(to the nearest 10k)</u></p> <p>Third party/ bespoke solution platforms</p> <p>✂</p> <p><u>Average estimated cost per bespoke solution platform = £✂(to the nearest 10k)</u></p> <p>✂</p> <p>We also received some cross-platform estimates, but have not included these as they are difficult to allocate to a type of platform (i.e. app-based or bespoke solution)</p>	<p>The cost information suggests that set-up costs are likely to be significantly higher for bespoke solution platforms than app-based platforms (see 3.9 to 3.12 for further information on how we define these types of platforms), so we have taken an average of costs for both of these types of platform.</p>
<p>Running</p>	<p>Contract management with the provider of access services provider AND/OR</p> <p>Internal operating costs, including additional overheads relating to the provision of</p>	<p>✂</p>	<p>The information we have on these costs suggests that they are relatively small and not likely to have a material impact on our overall cost estimates. We think it would involve spurious accuracy to include these costs, and also believe that some estimates of production/ repurposing costs (see below) will already have included these costs.</p>

Further Statement: Making On-demand Services Accessible

	access services (e.g. additional staff)		
	Purchase of access service assets (e.g. subtitle file) from content provider AND/OR	✂	We have used confidential estimates provided by two respondents.
	Costs of creating access services from scratch AND/OR	✂ <u>Average estimated running costs per hour²⁸ (rounded to the nearest ten pounds):</u> <u>Subtitling = £</u> ✂ <u>Audio description = £</u> ✂ <u>Sign-interpretation = £</u> ✂ <u>Sign-presentation = £</u> ✂	We have taken an average of confidential estimates provided by four respondents. We recognise that the costs of making sign-presentation may vary by genre and type of programming 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.
	²⁹ Cost of repurposing broadcast access services for use on-demand, which may include automated file format conversion and	✂ <u>Average estimated running costs per hour (rounded to near £10)</u> <u>Subtitling =</u> ✂ <u>AD =</u> ✂ <u>Sign-interpretation =</u> ✂	We have taken an average of confidential estimates provided by three respondents. For broadcasters with existing access obligations (ITV, C4, C5) we have assumed that 90% of running costs are repurposing costs and 10% are creation costs.

²⁸ ✂

²⁹ 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.

	<p>manual intervention (e.g. to remove ad breaks from broadcast assets where necessary).</p>		<p>5 out of 6 catch up providers indicated that the vast majority of content on their services is currently 'catch-up' content from broadcast services, but we recognise that some catch up providers may need to make some VOD-only or archive content accessible to meet the required target levels.</p> <p>Very few broadcasters currently choose to provide sign-presented content on their channels, so we have assumed all sign-presentation costs are creation, rather than repurposing costs.</p>
	<p>Processing and delivery costs (converting the on-demand files into different formats required by platforms and delivering to the end-user)</p>	✂	<p>The information we have on these costs suggests that they are relatively small and not likely to have a material impact on our overall cost estimates. We have not included these costs as want to avoid spurious accuracy.</p>
Additional	<p>Monitoring/ Reporting</p>	<p>Some providers (e.g. C4, Sky) have said there are costs involved in monitoring/ reporting on access service provision (see Implementation section). However, we have not received any specific figures.</p>	<p>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 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.</p>

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

	Assumptions
Provider turnover	<p>We have used Companies House Data for 2019 (i.e. matching the year to which catalogue size data relates). Where 2019 data was not available, we have used returns for the nearest period for which data was available. For one provider, we have used information it provided to us on turnover.</p>
Catalogue size	<p>We have used data returns submitted to Ofcom by providers for the second half of 2019 for our 2019 Access Service Data report. Where providers did not submit data returns in the second half of 2019, we have used returns for the first half of 2019 instead. 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 second half of 2019 (or in some cases the first half of 2019). We have applied refresh rates as outlined in the tables below to estimate the total hours of programming which a given provider makes available during the course of a year. We have used bespoke assumptions on refresh rates where we have additional information.</p> <p>Our Access Service Data report does not cover BBC iPlayer so it is not included in our analysis.</p> <p>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.</p> <p>For providers with more than one branded ODPS, we understand that the proportion of content which is repeated across different branded services can vary significantly by provider (see Implementation section). So, for providers with more than one branded ODPS, we have assumed that 50% of content is repeated across different ODPS, i.e. we have taken 100% of the hours from a provider’s largest reported catalogue size (on a single given platform) on their largest ODPS and added 50% of the sum of the largest reported catalogue sizes (on a single given platform) for each of their remaining branded ODPS. For several providers we have used bespoke assumptions on the proportion of content repeated across their services based on information provided by them.</p> <p>There are several providers for whom we did not receive data on catalogue size for 2019, and which are therefore not included in our calculations.</p>

<p>Number of platforms on which ODPS are available</p>	<p>We have included the platforms listed in returns submitted to Ofcom by providers for our 2019 Access Services Data report. For providers with multiple ODPS, we have included each unique platform on which one or more ODPS is available.</p> <p>For providers with ODPS available in the UK, using audience data from larger providers, we have not included platforms on which we think ODPS are likely to be excluded on audience size grounds (see Audience Size). For several providers, we have excluded additional platforms on grounds of audience size where we have additional data.</p> <p>For providers with one or more ODPS available only outside the UK, we have not included 50% of platforms listed in the data report; this is to reflect the fact that some platforms are likely to be excluded on audience size grounds and in addition we only expect providers to incur small additional set up costs for providing access services on platforms operated in multiple countries (which are often listed as separate platforms in the data returns).</p>
<p>Type of platforms on which ODPS are available</p>	<p>For ODPS available in the UK, we have categorised the platforms listed in the 2019 data report as app-based or bespoke solution platforms, based on our knowledge of those platforms. See 3.9 to 3.12 for more information on how we define these types of platforms.</p> <p>We have taken the average proportion of app-based and bespoke solution platforms on UK-based ODPS (65% of platforms are app-based) and assumed that the same split applies for non-UK based ODPS.</p>

A1.14 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) Sign-interpretation = £
- b) For repurposing broadcast content:
 - i) Subtitles = £
 - ii) AD = £
 - iii) Sign-interpretation = £³⁰

³⁰ £

A1.15 In line with Figure 1, our information on costs shows that set-up costs are likely to be higher for bespoke solution platforms than app-based platforms. We have amortised likely set up costs over a five-year period to estimate the **annualised set-up costs for app-based and bespoke solution platforms**. While we acknowledge that the lifespan of platforms may vary, we have used a five-year period as a rough estimate of the ‘useful life’ of the set-up costs (this is broadly in line with the typical lifespan of smart TVs³¹)

- i) For app-based platforms, set-up costs of \pounds per year
- ii) For bespoke solution platforms, set-up costs of \pounds per year.

Cost calculations

Costs of meeting targets over four years

A1.16 In Figure 4, we have estimated the costs of meeting the targets over the four years, from a starting point of zero provision. We have modelled both an upper and lower estimate of the rate at which content is refreshed over the course of a year – 10% and 100% (and used bespoke assumptions on refresh rates where we have additional information). Some providers may refresh their content entirely over the course of a year (e.g. ‘pure’ catch up services), but many providers retain content on their service for extended periods of time (e.g. those that offer ‘box-set’ archive content) and the rate at which content is refreshed on such services is likely to be significantly lower than 100%. This means the true cost for many providers will be below the high end of the range presented below.

A1.17 We have modelled the impact of the recommended 2 and 4-year statutory targets, along with potential interim targets for year 1 and 3 (see Implementation for more detail on target levels). We have also modelled the costs of meeting the full requirements with the 2 year signing target set at both 2.5% and 5% (see Signing for more detail on these options). These target levels are all set out in Figure 3 below.

A1.18 We have also estimated the costs of meeting the full requirements for providers who choose to provide a financial contribution to a third-party sign-presentation provider (such as BSLBT) instead of provide sign-interpretation. The year 4 contribution levels for VOD only providers are scaled in relation to a given provider’s catalogue size at £7.60 per hour of programming. This has been set by reference to the maximum contribution levels under the broadcast requirements of £66,257³² per channel (which translates to £7.60 per hour of content assuming 8760 hours are broadcast per year). We have modelled potential interim contribution levels for years 1-3 (set out in Figure 3). Contribution levels for catch up providers are set at 1/3 of the levels for VOD-only providers for the reasons described at 4.11 and 4.12.

³¹ From its consumer electronics research, Futuresource Consulting estimate that 89% of Smart TVs in use within the UK are under five years old today, and that almost all Smart TVs will have been replaced by their eighth year of ownership.

³² This figure is adjusted each year for inflation – see our [TV Access Services Code](#)

A1.19 We have established the cost of meeting the targets 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 either sign-interpretation or a financial contribution to a sign-presentation provider and the % target (see Figure 3)
- Set-Up Costs: multiplied the number of platforms on which each provider is available (see Figure 2) by the annualized set-up cost per platform of (see A1.15).
- Added the Running Costs and Set-up Costs together and divided them by each provider’s turnover.

A1.20 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.

A1.21 We have assumed exemptions for some platforms on grounds of audience size, based on data submitted by larger providers (see Figure 2) but believe that in practice more services/ platforms are likely to be exempt on grounds of audience size and/ or technical difficulty. We have modelled the impact of meeting the targets across all remaining, non-exempt platforms – in practice, we are proposing a flexible approach to meeting the targets, but as stated at 5.30, do not think this will generally have a significant impact on the number of platforms on which a given provider’s access services are available.

Figure 3: Target Levels

Access Service	Year 1	Year 2	Year 3	Year 4
Subtitling	20%	40%	60%	80%
Audio description	2.5%	5%	7.5%	10%
Signing (2.5% year 2 option)	1.25%	2.5%	3.75%	5%
Signing (5% year 2 option)	2.5%	5%	5%	5%
Financial contribution option for catch up providers	£0.63 per hour	£1.26 per hour	£1.89 per hour	£2.52 per hour
Financial contribution option for VOD-only providers	£1.89 per hour	£3.78 per hour	£5.67 per hour	£7.60 per hour

- A1.22 Our analysis in Figure 4 below (redacted for confidentiality reasons) suggests that 23 providers would be able to afford the year 4 requirements within 1% of their turnover, while 10 providers would be exempt (if we assume that 100% of content is refreshed over the course of a year).³³ The analysis suggests that the majority of these providers should be able to afford the 4 year targets at significantly less than 1% of turnover (assuming a financial contribution in relation to signing, we estimate that 13 providers would spend less than 0.25% of turnover and only four would spend over 0.6% with a maximum spend of 0.85%)
- A1.23 If we assume a 10% refresh rate³⁴, our analysis suggest that an additional 5 providers would be able to afford the year 4 requirements within 1% of turnover. Under this scenario (and again assuming a financial contribution for signing) we estimate that 19 providers would spend under 0.25% of turnover and five would spend above 0.6% with a maximum spend of 0.86%).
- A1.24 Regardless of the signing target level modelled (e.g. 2.5% or 5%), the same number of providers are shown to be able to afford the year 4 targets within 1% of turnover. Choosing the financial contribution signing option might affect the affordability of the year 4 targets for 1 provider (if we assume a 100% refresh rate).

Figure 4: Cost of Meeting the Targets (as % of turnover)

Provider (provider type)	Refresh rate	Signing option	Sign interpretation Y2 level	Year 1	Year 2	Year 3	Year 4
✂							

Costs of meeting signing requirements

- A1.25 We have estimated the likely costs to providers to meet the 4 year signing requirements only, in order to assess the possible financial incentives to providers of choosing a particular signing option. We have assumed that 50% of content is refreshed on a given service over the course of a year and used bespoke assumptions on refresh rates where known. In assessing likely costs, we have used the following cost estimates:

³³ For some providers we have used bespoke assumptions on refresh rates where we have additional information.

³⁴ For some providers we have used bespoke assumptions on refresh rates where we have additional information.

- a) **Sign-interpretation:** we have used costs per hour of creating/ repurposing signed content set out at A1.14, along with estimated set up costs in relation to signing only. In line with Figure 1, we estimate that these annualised costs are £~~3~~ per platform³⁵ which we've amortised over 5 years in line with the useful set up life of a platform (see A1.15).
- b) **Sign-presentation:** in line with Figure 1, we have used costs of creating sign-presented content at £~~3~~ per hour. We do not consider there to be significant development costs associated with delivering sign-presented programming across platforms (as it takes the form of a standard programme file).
- c) **Financial contributions:** we have used the 4-year financial contribution levels set out in Figure 3.
- A1.26 Our analysis suggests that the costs of meeting the year 4 sign-presentation targets are higher than the costs of meeting the 4 year sign-interpretation targets for 26 of 33 providers. For all providers, the year 4 financial contribution levels are significantly lower than the costs of meeting the year 4 sign-interpretation or sign-presentation requirements.
- A1.27 We have looked in more detail at three ODPS providers who are also broadcasters currently making contributions to BSLBT. We have assumed a refresh rate of 50% or a bespoke assumption where we have additional information. We have estimated the costs of providing contributions to an approved provider of sign-presentation on their broadcast and on-demand services, or sign-interpretation on both.
- A1.28 For the broadcast estimates, we take into account the number of channels the broadcaster has and the percentage of content. The broadcast sign-interpretation estimates take into account the likely quantity of 'first-run' content each year over a period of four years, averaged to give a single year figure. The on-demand sign-interpretation estimates are also averaged across the first four years of requirements.
- A1.29 The annual contribution costs for both broadcast and on-demand services assume that the maximum current and proposed contribution levels are provided. In practice this is likely to be an over-estimate as some broadcast channels may not currently be contributing at the highest required level, and the ODPS contributions would initially be set at lower levels (see 5.13 and Figure 3).
- A1.30 In each of the three cases, the combined cost of contributions (on linear and on-demand) is less than the combined cost of providing signed content on linear and on-demand.

³⁵ We've assumed that set up costs are the same for app-based and bespoke solution platforms.

A2. Equality Impact Assessment

- A2.1 An Equality Impact Assessment (EIA) assesses the potential impact of our policies on the following equality groups: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation³⁶. We refer to groups of people with these protected characteristics as ‘equality groups’.
- A2.2 An EIA examines the impact our policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.
- A2.3 We have not considered it necessary to carry out separate EIAs in relation to the additional equality groups in Northern Ireland: political opinion and dependents. This is because we anticipate that our proposals would not have a differential impact in Northern Ireland compared to consumers in general. In this Annex, we consider stakeholder responses to the EIA accompanying our consultation proposals, and set out our revised EIA for the recommendations made in this statement.

Stakeholder Comments on Equality Impact Assessment

What we proposed

- A2.4 Annex 3 of our consultation set out our EIA for the proposals in that consultation. In summary, we considered that our proposals were unlikely to have a detrimental impact on any of the relevant equality groups, including people with disabilities and older people.

What respondents said

- A2.5 Respondents, including both ODPS providers (UKTV, BBC, ITV), consumer groups (ACS RNID, RNIB) and one access service provider (Red Bee Media), generally agreed with our assessment of the impact of our proposals on the relevant equality groups. However, Channel 4 was concerned that our approach could have a negative impact on provision for disabled audiences by damaging its ability to prioritise resource to deliver greatest audience benefit and driving volume and breadth of provision over quality, suitability and variety.

Ofcom View

- A2.6 We remain of the view that our proposals are unlikely to have a negative impact on any of the relevant equality groups. Indeed, we think that our proposed (and recommended) form of the regulations should lead to measurable progress in **both** quantity and quality of access services, given that providers should be required to have regard to Ofcom guidance on quality when meeting the required target levels (see 6.4). Taking account of stakeholder

³⁶ As defined in the Equality Act 2010

responses, we are also now recommending a flexible approach to meeting targets across platforms (see 5.31), under which we expect providers to prioritise resource where it brings maximum benefit to audiences. We consider these issues further in our updated EIA for our recommendations below.

Equality Impact Assessment

- A2.7 We consider that our recommended form of the regulations 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’)³⁷
 - c) people belonging to these or other equality groups to the extent that those people use access services for reasons other than sight or hearing impairment.
- A2.8 As stated at 2.22, this statement 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.
- A2.9 On-demand viewing is an important source of information and entertainment and is increasing in popularity.³⁸ We expect that the recommended targets will result in increased 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). We think that our recommended approach of applying the targets flexibly across platforms should allow providers to prioritise resource where audience benefit is greatest, without leading to a significant reduction in the number of accessible platforms. Our recommended requirements in relation to the quality and usability of access services (see 6.4) should ensure that increasing amounts of accessible content can be properly enjoyed.
- A2.10 Our recommended 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 recommended exemptions for audience benefit (see 3.32) 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.

³⁷ 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 RNIB’s [Facts and Figures](#)).

³⁸ For example, the proportion of UK households who subscribe to any SVoD service has increased from 20% in Q1 2015 to 53% in Q1 2020. Source: BARB Establishment Survey, Q: “Do you, or does anyone in your household, subscribe to the following...” Note: Any SVoD is any of the following - Netflix, Amazon Prime Video, Now TV or DisneyLife upto Q1 2020

Therefore, we do not expect exemptions to lead to a significant reduction in benefit to the relevant equality groups.

- A2.11 Our recommendations on signing arrangements (see Signing) are aimed at ensuring that both sign-interpreted and sign-presented content is made available on-demand, while BSL user preferences are taken into account. This should increase the benefits to sign-language users.

Conclusion

- A2.12 Overall, we consider that our recommended form of the regulations (as set out in this document and our 2018 statement) is likely to have a positive impact on the relevant equality groups, including people with disabilities and older people.

A2. Relevant legislation

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

Further Statement: Making On-demand Services Accessible

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

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

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

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

(4) An enforcement notification must—

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

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

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

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

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

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

(4) After that section insert—

"368CA Code on accessibility for people with disabilities

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

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

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

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

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

they consider appropriate.”

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

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

- (a) in paragraph (a), after “368D” insert “, or of regulations under section 368BC”,
- (b) in paragraph (b)—
 - (i) after “368D” insert “or the regulations”, and
 - (ii) for “or 368I” substitute “, 368I or 368BC”.

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

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

Extracts from Audiovisual Media Services Regulations 2020

27. In section 368BC (accessibility for people with disabilities)(1)—

(a) in subsection (1)—

(i) for “their services” substitute “such services”;

(ii) for “affecting their sight or hearing or both” substitute “, including, in particular, people with disabilities affecting their sight or hearing, or both”;

(b) in subsection (2), after paragraph (c) insert—

“(d) requirements for providers of on-demand programme services to report annually to the appropriate regulatory authority about the accessibility of such services.”;

(c) in subsection (4)(b) omit “affecting their sight or hearing or both”.

28. In section 368C (duties of the appropriate regulatory authority)(1)—

Further Statement: Making On-demand Services Accessible

(a) in subsection (1), for “section 368D” substitute “sections 368CB and 368D”;

(b) for subsection (2)(2) substitute—

“(2) The appropriate regulatory authority must encourage providers of on-demand programme services to develop accessibility action plans with a view to continuously and progressively making such services more accessible to people with disabilities.

(2A) The appropriate regulatory authority must provide a single, easily accessible (including by people with disabilities), online point of contact for providing information and receiving complaints regarding accessibility of on-demand programme services to people with disabilities.”;

29. In section 368CA (code on accessibility for people with disabilities)(1)—

(a) in subsection (1)(b)—

(i) for “their services” substitute “on-demand programme services”;

(ii) omit “affecting their sight or hearing or both”;

(b) in subsection (2), after “revision accessible to” insert “people with disabilities, in particular”.