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## **Annex 3: Ofcom's Code on Television Access Services - Revisions**

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# 1. Code on Television Access Services

## Introduction

- 1.1 This Code on Television Access Services ("the Code") sets out the guidance and requirements for on subtitling, sign language and audio description ('television access services') that apply to television services regulated by Ofcom<sup>1</sup> licensed in accordance with the Communications Act 2003, the Broadcasting Act 1996, or the Broadcasting Act 1990.
- 1.2 The Code applies to apply regardless of the means of delivery<sup>2</sup>, to every licensed public service channels, any digital television programme services (DPS) provided by the Welsh Authority (including S4C Digital), digital television programme services (DTPS), television licensable content services (TLCS), and restricted television services. The Code also applies to the BBC's UK Public Television Services<sup>3</sup>, regardless of the means of delivery. The BBC Agreement<sup>4</sup> also requires the BBC to observe the code in respect of its public television services subject to any exclusions agreed between Ofcom and the BBC having regard to the considerations set out in section 303(8).
- 1.3 Ofcom annually updates the list of channels required to provide access services based on the principles set out in this Code. The list is made available on Ofcom's website
- 1.4 The Code does not to apply to electronic programme guides provided under a TLCS or DPS licence<sup>5</sup>, or to any service that comprises exclusively of teleshopping or other forms of advertising<sup>6</sup> services comprising advertising (teleshopping), which is excluded from the definition of programme for the purpose of section 303.
- 1.5 The specific targets applying to all channels can be found in the most recent of the periodic reports published by Ofcom.
- 1.6 Broadcasters should also have regard to Ofcom's overview of best practice in providing access services<sup>7</sup>. Guidance on practices to be followed in providing access services is set out in Appendix 4 to this code.
- 1.7 Ofcom recognises notes that some broadcasters already provide television access services on a voluntary basis, and encourages broadcasters to do so where possible, and to have regard to relevant parts of the code and guidance.

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<sup>1</sup> Licensed in accordance with the Communications Act 2003, the Broadcasting Act 1996 or the Broadcasting Act 1990

<sup>2</sup> The requirements will extend to online delivery if the online service can be accessed by means of a regulated electronic programme guide. See Section 211 of the Communications Act 2003.

<sup>3</sup> Defined in Article 75 of the BBC Agreement

<sup>4</sup> The BBC Agreement can be found at the following link:

[http://www.bbc.co.uk/bbctrust/governance/regulatory\\_framework/charter\\_agreement.html](http://www.bbc.co.uk/bbctrust/governance/regulatory_framework/charter_agreement.html)

<sup>5</sup> The Ofcom Code of practice on electronic programme guides sets out accessibility practices to be followed by providers of electronic programme guides ("EPGs")

<sup>6</sup> Advertising is excluded from the definition of 'programme' under section 303 of the Act

<sup>7</sup> [We will add a link to the new location on the Ofcom website]

## 2. Legal Background ~~Statutory provisions~~

- 2.1 ~~Under~~ Section 303 ~~to 305~~ of the Communications Act 2003 ("the Act") ~~require Ofcom to draw up this Code.~~ Ofcom is required to draw up, and from time to time review and revise, a code giving guidance ~~as to~~ on the extent to which ~~licensed~~ television services should promote the understanding and enjoyment ~~of programmes by people with disabilities, and in particular people with sight and/ or hearing impairment.~~ ~~by persons who are deaf or hard of hearing, as well as those who are blind or partially sighted, or who have a dual sensory impairment (deafblind).~~ The code should also give guidance on the means by which such understanding and enjoyment should be promoted. Ofcom is required to review and revise the code of guidance from time to time
- 2.2 ~~Ofcom is required to set ten year targets for subtitling, signing and audio description, as well as five year targets for subtitling. It is also empowered to set other interim targets, and these are set out in Tables 1, 2 3 and 4 below. The targets apply to the anniversary of the relevant date or notice date for the service in question. Ofcom is also empowered to exclude certain types of programme or service from the requirement to provide television access services, or apply different targets to excluded programmes.~~
- 2.3 Under the Act, the Code must also include provision for securing that broadcasters ensure that adequate information is made available to those who are likely to want to make use of the assistance they provide. The relevant requirements are set out in the Promoting Awareness section
- 2.4 The Code must include provision encouraging broadcasters to develop accessibility action plans and requiring such action plans to be notified to Ofcom.
- 2.5 The Code must also include provision requiring broadcasters to report annually to Ofcom about the accessibility of relevant services to people with disabilities.

### Legal Background for the BBC

- 2.6 The BBC Agreement requires the BBC to observe a code giving guidance as to the extent to which its UK Public Services should promote the understanding and enjoyment of programmes by people with sight and/or hearing impairments, and the means by which such understanding and enjoyment should be promoted. This Code includes relevant guidance in relation to programmes included in the BBC's UK Public Television Services which must be observed by the BBC.<sup>8</sup>

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<sup>8</sup> The BBC's UK Public Services are the services included in the list maintained and published by the BBC under Part 1 of Schedule 1 to the Agreement, as amended by the BBC from time to time. A material change to the UK Public Services may require the list to be amended. UK Public Television Services are those UK Public Services consisting of television programme services.

- 2.7 Under the BBC Agreement, the code which must be observed by the BBC must also secure that adequate information is provided to those who need access services, as described in relation to other broadcasters at 1.10.

## 3. Definitions

### 3.1 In this code:

- a) 'subtitling' is text on screen representing speech and sound effects synchronised as closely as possible to the sound.
- b) 'audio description' is an additional audio commentary that describes what is happening on screen, primarily for people with visual impairments.
- c) 'signing' is when programmes are translated into or presented in sign-language (see 'sign-interpretation' and 'sign-presentation'). Sign-language comprises the use of manual gestures, facial expression and body language to convey meaning. British Sign Language (BSL) is the most popular sign language in the United Kingdom and is a distinct language with different syntax and vocabulary from English.
- d) 'sign-interpretation' is when a programme is originally produced without signing and a signer is superimposed onto the programme, usually in the corner of the screen.
- e) 'sign-presentation' is when a programme is presented in sign-language
- f) 'domestic broadcaster' means the provider of a television programme service which is primarily intended for reception by members of the public within the United Kingdom. We call these television programme services 'domestic channels';
- g) 'non-domestic broadcaster' means the provider of a television programme service which is primarily intended for reception by members of the public in countries party to the European Convention of Transfrontier Television ("the ECTT") other than the United Kingdom. Member States of the European Union other than the United Kingdom, and in member states of the European Economic Area to which the Audiovisual Media Services ("AVMS") Directive has been extended<sup>9</sup>. We call these television programme services 'non-domestic channels';
- h) The 'applicable date' for the purpose of determining the access service obligations is 29 December 2003<sup>10</sup> for domestic channels and 1 January 2013<sup>11</sup> for non-domestic channels for services commencing before these dates. For services commencing after these dates, the applicable date is the date on which the provision of the service commenced. The applicable date differs for the PSB channels<sup>12</sup>. Ofcom may determine that a television service should be treated as a continuation of a previous service in circumstances where the nature of the service has remained substantively the same.

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<sup>9</sup> Directive 2010/13/EU has been extended to cover Norway, Iceland and Lichtenstein, which are member states of the European Economic Area.<sup>10</sup> The date when the legislation first came into force

<sup>10</sup> The date when the legislation first came into force

<sup>11</sup> This is the date on which access service requirements first came into force for non-domestic channels. See our [statement](#) Ofcom, Access services on non-domestic channels, 1-October 2012

([http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/statement/Non\\_dom\\_access\\_services.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/statement/Non_dom_access_services.pdf)) ('2012 Statement')

<sup>12</sup> BBC 1 and BBC 2 have an applicable date of 1 January 1997. As set out in the Act, Channel 3, 4 and S4C Digital have an applicable date of 1 January 2000, and Channel 5 has an applicable date of 1 January 1998.

The 'relevant date' for the purpose of determining tenth anniversary of domestic channels is 1 January 1997 in the case of BBCs 1 and 2, 1 January 1998 for Channel 5, and 1 January 2000 for Channels 3 and 4 and S4C Digital. In the case of digital television programme services, the relevant date is the date of entry into force of the legislation, which is 29 December 2003. In the case of television services starting after 29 December 2003, the relevant date is the date on which provision of that service commenced unless Ofcom has determined by reference to the factors set out in paragraph 15 that all the programmes in a particular service should be excluded and has imposed a separate timetable for alternative requirements in relation to that service. Ofcom may determine that a television service should be treated as a continuation of a previous service in order to prevent broadcasters from avoiding the requirements of this code by replacing one service with another. the 'notice date' for the purpose of determining the access service obligations of non-domestic channels is 1 January 2013

- i) 'average audience share' means the audience share over a year in **a given** each country where the service is received;
- j) 'channels with larger audience shares' means channels with audience shares above the 'signing threshold' as set out in Annex 2 to the Code;
- k) 'channels with smaller audience shares' means channels **subject to access services obligations** with an **average** audience share **higher than the relevant audience share threshold but lower than the relevant signing threshold** between the audience share and signing thresholds set out in Annex 12 to the Code. **These channels are excluded from the statutory signing targets set out in Table 1 of this Code, and instead are subject to different requirements for signing as explained in paragraphs 1.27 to 1.32,** and which are excluded under section 303(9) of the Communications Act 2003 from the percentage targets for signing set out in Table 1 of this Code; and

## 4. Targets

- 4.1 This section sets out the statutory targets for broadcasters, along with interim targets set by Ofcom. Broadcasters should also see the Exclusions and Alternative Requirements section for guidance on programmes and services which are excluded from the full targets set out here, and the alternative requirements which may apply.
- 4.2 The Act sets out ten-year targets for subtitling, audio description and signing (80%,10%, 5%), as well as five-year targets for subtitling (60%). The Act specifies higher ten-year subtitling targets for Channel 3 and Channel 4 than for other broadcasters (90%). In accordance with the BBC Agreement, BBC Channels are required to meet the highest subtitling targets of all broadcasters (100%).<sup>13</sup> These targets, along with Ofcom's interim targets, are included in Table 1 below.
- 4.3 The statutory targets for broadcasters are to be interpreted expressed as percentages of programme hours in a year the service, including all programmes other than advertisements<sup>14</sup> and programmes that have been excluded by reference to the factors set out in the Exclusions and Alternative Requirements section summarised in paragraph 15. They rise from a low level to the ten-year targets prescribed by the Act, that is eighty per cent (80%) for subtitling, five per cent (5%) for signing and ten per cent (10%) for audio description. Different signing arrangements apply to channels with smaller audience shares. In the case of Channel 3 and Channel 4, the relevant target for subtitling is 90%. The targets reflect the statutory requirement for subtitling to be applied at the rate of sixty per cent (60%) of non-excluded programmes from the fifth anniversary.
- 4.4 The targets represent minimum obligations and apply on a rolling basis from each anniversary of the applicable date onwards for each service in question referred to in the case of Table 1 and Table 2, for each calendar year as referred to in Table 3, and from each anniversary referred to in the case of Table 4. In compliance with section 303(3) of the Communications the Act, from the fifth anniversary, targets will apply on a rolling basis starting each week from one week after the date to which the previous annual average has been calculated.

### Public service broadcasters

- 4.5 Licensed public service broadcasters and S4C which are already under an obligation to provide television access services are required to continue meeting the interim targets set in Annex 1. The BBC is required to continue meeting the interim targets to which it has committed itself, also set out in Annex 1.

<sup>13</sup> As explained in the Legal Background section above, this Code constitutes guidance which must be observed by the BBC in providing its UK Public Television Channels, in accordance with the BBC Agreement.

<sup>14</sup> Section 405 of the Communications Act provides that 'programme' includes an advertisement and, in relation to a service, anything included in that service. Section 303(13) excludes advertisements from the meaning of programme for the purpose of that section.



## Domestic and non-domestic channels with larger audience shares

4.6 Other channels (both domestic and non-domestic) with an average audience share higher than the signing threshold are required to meet the targets set out in Table 1 below.<sup>15</sup>

Table 1: Access services targets<sup>16</sup> for channels which are not excluded or subject to alternative requirements channels with larger audience shares

Anniversary of applicable date relevant date or notice date	Subtitling	Audio Description	Signing (sign-interpretation and/ or sign-presentation)
First	10%	2%	1%
Second	10%	4%	1%
Third	35%	6%	2%
Fourth	35%	8%	2%
Fifth	60%	10%	3%
Sixth	60%	10%	3%
Seventh	70%	10%	4%
Eighth	70%	10%	4%
Ninth	70%	10%	4%
	Channel 3 and Channel 4:90%		
Tenth onwards	BBC Channels:100% All other channels: 80%	10%	5%

<sup>15</sup> A list of channels required to provide access services is available on Ofcom's website at <http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv-access-serv/>. The targets applying to all these channels can be found in the most recent of the periodic reports published by Ofcom on its website here. at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/tv-access-services-reports>.

<sup>16</sup> Expressed as a percentage of total non-excluded programming in a year; see paragraphs 13–15 for the definition of excluded programming for the purpose of access services regime.

## Domestic channels with smaller audience shares

- 4.7 Access service targets for domestic channels with smaller audiences – higher than the audience share threshold, but below the signing threshold (so-called ‘channels with smaller audience shares’) – are set out in Table 2 below.

**Table 2: Access services targets for domestic channels with smaller audience shares**

Anniversary of relevant date or notice date	Subtitling	Audio Description	Sign-presented programmes
First	10%	2%	30 minutes per month
Second	10%	4%	30
Third	35%	6%	30
Fourth	35%	8%	30
Fifth	60%	10%	45
Sixth	60%	10%	45
Seventh	70%	10%	60
Eighth	70%	10%	60
Ninth	70%	10%	60
Tenth onwards	80%	10%	75

## Non-domestic channels with smaller audience shares

- 4.8 Access service targets for non-domestic channels with smaller audiences are set out in Table 4 below. As regards signing, the requirement is to provide the amount of sign-presented programming referring to the anniversary. However, Ofcom may impose substitute requirements for signing, if it considers that these would better meet the needs of sign language users in the country concerned.

**Table 4: Access services targets for non-domestic channels with smaller audience shares**

Substitute requirements for signing <sup>18</sup>
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<sup>18</sup> Subject to Ofcom's agreement to impose substitute requirements.

Anniversary of notice date <sup>17</sup>	Subtitling	Audio Description	Sign-presented programmes	Annual quotas for sign-interpretation	Or Annual quotas for additional subtitling
First	10%	2%	30 minutes per month	1%	5%
Second	10%	4%	30	1%	5%
Third	35%	6%	30	2%	7.5%
Fourth	35%	8%	30	2%	7.5%
Fifth	60%	10%	45	3%	10%
Sixth	60%	10%	45	3%	10%
Seventh	70%	10%	60	4%	12.5%
Eighth	70%	10%	60	4%	12.5%
Ninth	70%	10%	60	4%	12.5%
Tenth onwards	80%	10%	75	5%	15%

<sup>17</sup> The 'notice date' for the purpose of determining the access service obligations of non-domestic channels is 1 January 2013.

## 5. Exclusions and alternative requirements

### Excluded programmes

- 5.1 Under the Act, Ofcom can exclude certain programmes or services from the statutory targets and apply different requirements to excluded programmes/services.
- 5.2 Ofcom may exclude programmes and services having regard, in particular, to:
- a) the extent of the benefit which would be conferred by the provision of the assistance for disabled people in relation to the programmes;
  - b) the size of the intended audience for the programmes;
  - c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
  - d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;
  - e) the technical difficulty of providing the assistance; and
  - f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.
- 5.3 Having regard to these factors, we set out below guidance on how Ofcom excludes programmes and services from the full statutory targets, and the alternative requirements which may apply for excluded programmes/ services. Ofcom will apply the same guidance, as applicable, on exclusions and alternative requirements relating to the BBC's UK Public Television Channels.<sup>19</sup>

## Audience benefit

### Exclusion from providing any access services

- 5.4 ~~Having regard to these factors,~~ Television services are excluded from providing television access services if their share of viewing falls below the relevant audience share threshold. The relevant audience share thresholds are as follows for:
- a) For domestic television services: ~~is an average audience share (of all UK households over a 12-month period) ('audience share')~~ of 0.05% ~~or less~~
  - b) For non-domestic television services: ~~is the average audience share (in a 12-month period) indicated in Annex 1 for in the relevant country party to the ECTT EU Member State where the service is received over a 12 month period indicated in Annex 2.~~ Ofcom updates Annex 1 on an annual basis to ensure that the thresholds for non-

<sup>19</sup> As explained in Legal Background above, this Code constitutes guidance which must be observed by the BBC in regard to its UK Public Television, in accordance with the BBC Agreement.

domestic services represent an equivalent number of viewers to the domestic 0.05% threshold in any given year.

#### Alternative Requirements for Signing

- 5.5 Ofcom ~~would expect to~~ **excludes** television services from **the statutory signing targets (in Table 1 above)** ~~providing signing~~ if they do not meet the relevant signing threshold.
- 5.6 The **relevant** signing thresholds **are as follows** for:
- a) **For** domestic television services: **is** an average audience share **(in a 12-month period)** of 1% **of the total viewing for all UK channels combined** ~~or less~~;
  - b) **For** non-domestic television services: **is the** average audience share **(in a 12-month period)** indicated in Annex 2 **for the relevant country party to the ECTT where the service is received. Ofcom updates Annex 1 on an annual basis to ensure that the thresholds for non-domestic services represent an equivalent number of viewers to the domestic 1% threshold in any given year** ~~Ofcom will consider, in the light of the factors set out above, whether or not channels with an audience share of slightly more than or slightly less than the signing threshold should be excluded.~~
- 5.7 **Ofcom has determined alternative signing requirements for television channels with an audience share below the relevant signing threshold but above the relevant audience share threshold ('channels with smaller audience shares'), as set out below.**
- 5.8 **Broadcasters may propose alternatives to the arrangements set out here, and Ofcom will consider these in light of the factors set out in paragraph 1.23, and the guidance set out in Annex 2 to the Code.** ~~Section 303(10)(c) of the Act allows Ofcom to impose alternative requirements with respect to the provision of assistance for disabled people in relation to any programmes or services it has excluded. In considering whether alternative requirements should be imposed on individual channels, it is open to Ofcom to take into account any voluntary arrangements entered into by broadcasters that would also meet the needs of sign language users more effectively.~~
- 5.9 ~~Having regard to this,~~ Ofcom requires that ~~domestic~~ channels with smaller audience shares ~~(as defined in paragraphs 2(b) and (c) of this Code)~~ should, from the first anniversary of the **applicable** ~~relevant~~ date, broadcast each month no less than the minimum amounts of sign-presented programming<sup>20</sup> specified in Table 2. **For domestic channels,** such programming **should be** ~~to be~~ shown between 7am and 11pm local time. Ofcom will keep this requirement under review.

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<sup>20</sup> Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

**Table 2: Sign-Presentation Requirements for Channels with smaller audience shares**

Anniversary of applicable date	First	Second	Third	Fourth	Fifth	Sixth	Seventh	Eighth	Ninth	Tenth onwards
Minutes per month of sign-presented programming	30	30	30	30	45	45	60	60	60	75

- 5.10 As Ofcom increased the sign-presentation requirements for domestic channels with smaller audience shares with effect from 1 January 2016, Ofcom applied transitional arrangements for longer-running channels to avoid a sudden increase in their obligations.<sup>21</sup> Transitional arrangements for sign presentation requirements apply to all domestic channels with smaller audience shares that have reached the fourth (or later) anniversary of their relevant date by 1 January 2016 (i.e. channels with a relevant date earlier than 1 January 2012) as set out in Table 3 below.

**Table 3: Transitional sign-presentation arrangements for domestic channels with smaller audience shares with an applicable date earlier than 1 January 2012 sign-presentation requirements (for channels that have reached the fourth [or later] anniversary of their relevant date by 1 January 2016)**

Calendar Year	2016	2017	2018	2019	2020	2021	2022
Minutes per month of sign-presented programming	30	35	45	50	60	65	75
Minimum monthly sign-presentation requirements	minutes	minutes	minutes	minutes	minutes	minutes	minutes

- 5.11 Having regards to the matters set out in paragraph 19, Ofcom requires that non-domestic channels with smaller audience shares (as defined in paragraph 2(c) and (e) of this Code) should, from the first anniversary of the notice date, broadcast each month no less than the minimum amount of sign-presented<sup>22</sup> programming specified in the third column of Table 4, unless Ofcom has determined that the regulatory requirements (sign-interpretation and extra subtitling) summarised in the fourth and fifth columns of Table 4 would better meet the needs of sign language users in the country concerned. Ofcom will keep this requirement under review.
- 5.12 Broadcasters may, if they wish, propose alternatives to the arrangements set out in paragraphs 20 and 21, and Ofcom will consider these in the light of the factors set out in

<sup>21</sup> For more detail, see our 2015 Statement

<sup>22</sup> See footnote 25

paragraph 15, the needs of people with hearing impairments and the guidance set out in Annex 3 to the Code. Further guidance on this is set out in Annex 3 to the Code.

- 5.13 Television services intended for reception by members of the public outside the European Union and European Economic Area are exempt from television access service requirements.

## Technical difficulty

- 5.14 Television access services need not be provided if Ofcom is satisfied that this would be impracticable on grounds of technical difficulty. Technical difficulty may include difficulties related to the platform used for the delivery of the service or to providing access services on particular genres or types of programming. For example, difficulty in providing audio description on music and news services where there is little space within the audio material to provide audio description. Ofcom will consider exclusions for technical difficulty on a case by case basis.

- 5.15 Broadcasters may, if they wish, request exclusions from the full targets on grounds of technical difficulty (see Process for Determining Requirements section).

, including the following cases:

- a) audio description of music and news programmes and services, where there is little space within the dialogue/sound track to provide audio description, and less need. However, broadcasters are required to ensure that producers, editors and presenters are trained in techniques to describe the significance of images for the benefit of the blind and partially-sighted audience. Broadcasters are required to provide a statement of the training they are providing within 12 months of becoming subject to the code;
- b) provision of subtitling that is not supported by commercially available set top boxes (e.g. Chinese or Urdu); and
- c) provision of access services where a service is broadcast with several different language feeds, making the choice of language for access services problematic.

## CostAffordability

- 5.16 Ofcom has outlined three levels of access service provision, to avoid disproportionate costs for broadcasters. The three levels of provision are as follows:

<b>Level One:</b>	<u>100% of the</u> current annual targets for subtitling, signing and audio description, as well as any alternative requirements
<b>Level Two:</b>	66% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description, and any alternative requirements

**Level Three:** 33% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description and any alternative requirements

- 5.17 Broadcasters whose services are not otherwise excluded will be required to achieve the highest **Level** of provision they can afford within a budget equating to 1% of their 'relevant turnover'.<sup>23</sup> Only broadcasters unable to afford Level Three costs will be exempt from **access service** provision altogether on **affordability** grounds **of cost**.
- 5.18 Ofcom **determines** ~~has determined~~ average costs per hour of providing programming with subtitling, signing and audio description, ~~including any alternative requirements imposed in accordance with paragraphs 20 and 21. These have been used to calculate the costs of three levels of provision:~~ In determining the applicable costs for each channel, Ofcom will have regard to the number of hours broadcast each day, **the percentage of repeats**, ~~the proportion of the schedule that is exempted from the provision of one or more access services, and the percentage of repeats~~ **and any exemptions or alternative requirements imposed in accordance with paragraph 1.23.**
- 5.19 ~~In determining the applicable amount of relevant turnover, Ofcom will have regard to the most recent declarations of relevant turnover.~~
- 5.20 In the case of channels in common ownership<sup>24</sup>, Ofcom will determine which channels that are not otherwise excluded should provide television access services by averaging the total relevant turnover across all services in common ownership. If this means that each of the channels would have an average relevant turnover which would enable it to meet one of the three **Levels** at a cost of 1% or less of that average relevant turnover, those channels will be required to provide the relevant **Level** of television access services. If the averaging of relevant turnover would mean that none of the services would need to provide television access services, Ofcom will assess eligibility on the basis of the individual relevant turnover attributable to each service.
- 5.21 ~~Services which meet the 1% threshold in the most recent declarations of relevant turnover before the start of the next calendar year will be required to provide television access services at the appropriate level for the whole of the next calendar year.~~

<sup>23</sup> As defined in Ofcom's **Statement of Charging Principles**, ~~Statement of Charging Principles, 8 February 2005,~~ [http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging\\_principles.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf)

<sup>24</sup> For the purpose of the Code, Ofcom will treat a channel as being in common ownership with one or more other channels if each channel is a subsidiary (within the meaning of the Companies Act 1985) of a common holding company or if they share a common parent at any point in the chain of ownership which has a majority interest in each. In determining whether channels are in common ownership, Ofcom will also have regard to other relevant factors of the kind set out in Ofcom's **Guidance on the definition of control of media companies** ~~Guidance on the definition of control of media companies~~ (<http://stakeholders.ofcom.org.uk/consultations/media2/statement/>).



## Other exclusions

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

- a) — those comprising advertising only, for example, a shopping channel;
- b) — electronic programme guides; and
- c) — those licensed outside the United Kingdom.

## Presentational and technical standards

5.23 — Broadcasters are required to observe the standards set out in the Guidelines on Television Access Service Standards in Annex 4 to the code.

5.24 — There are currently no technical standards for the means by which Television Access Services are to be made available to viewers. However, Ofcom expects television service providers to use reasonable endeavours to ensure that such television access services can be accessed by the greatest number of viewers in their homes (whether they receive their services by terrestrial signal, or by satellite or cable).

## 6. ~~Promotion of~~ Promoting awareness

- 6.1 Ofcom requires television service providers to promote awareness of the availability of their television access services to potential users of the services by making available accurate and timely information to electronic programme guide (EPG) operators listing their services, and by providing similar information on their website. Ofcom has imposed corresponding obligations on EPG operators through the EPG code made under section 310 of the Act. Broadcasters who provide programme synopses for use in EPGs should indicate which programmes are accompanied by television access services by including the standard upper-case acronyms for subtitling (S), audio description (AD) and signing (SL). Where broadcasters provide access services to other countries, they should endeavour to use the indicators for access services used in those countries.
- 6.2 Ofcom will also expect television service providers to demonstrate that they are taking effective steps to publicise awareness of their television access services through other means, including periodic on-air announcements and information in publications aimed at persons likely to benefit from television access services. Where the nature of the access service is not spelt out in full, the standard abbreviations referred to in paragraph 1.44 above should be used.

## 7. Programming and Scheduling

- 7.1 Ofcom expects that broadcasters will normally schedule programming with subtitling and audio description at peak viewing times for each channel. However, as signing is currently only provided in open format, it is accepted that signed **television** programmes may need to be shown outside peak viewing hours (subject to **paragraph 1.30** paragraphs 20 and 21 above) and recorded by viewers with hearing impairments. In selecting programmes for which access services are to be provided, broadcasters should seek advice from disability groups about how best to maximise the benefits to the blind and those with visual impairments, to the deaf and hard of hearing, and to the deafblind. Ofcom encourages broadcasters not to seek to fulfil their obligations by scheduling multiple repeats of programmes, as this will detract from the benefit of providing access services to users.

### **Action Plans**

- 7.2 **Ofcom encourages broadcasters to develop accessibility action plans with a view to continuously and progressively making their services more accessible to people with disabilities. Any such action plans should be notified to Ofcom.**

### **Equal Opportunities legislation**

- 7.3 — Broadcasters will need to have regard to their obligations under equal opportunities legislation, including the need to make reasonable adjustments in the delivery of services so as to make these accessible to disabled people, and should seek their own advice on this.

## 8. Process for determining requirements

### Ofcom Assessment Changes in audience share and relevant turnover

- 8.1 Ofcom calculates and imposes requirements on a calendar year basis<sup>25</sup>. However, the target levels applying to a particular channel are determined by reference to that channel's 'applicable date' (see Targets section).
- 8.2 Each year, Ofcom will conduct a mid-year review of the audience share and relevant turnover of licensed channels licensed in the United Kingdom, based on the most recent four quarters for which corresponding data is available. Ofcom will notify the licensee, if on the basis of that review Ofcom considers that a channel is likely, in for the whole of the following calendar year, to be:
- a) subject to a requirement to provide television access services;
  - b) subject to a different level of provision; or
  - c) subject to alternative signing requirements; or
  - d) excluded from the requirement to provide television access services.
- 8.3 Ofcom will also specify the levels of access service provision which the licensee is likely to be required to meet in the following calendar year. Ofcom aims to notify broadcasters of the outcome of the mid-year review by 30 June each year.
- 8.4 To aid planning for broadcasters not currently required by reason of audience share or revenue to provide television access services, Ofcom will carry out a mid-year review based on corresponding data for revenue and audience shares, and<sup>26</sup>. In the event that the audience share of a television service currently required to provide television access services falls below the threshold in two successive quarters, Ofcom will notify the broadcaster that the obligation will discontinue at the end of the calendar year in question.
- 8.5 If a mid-year review indicates that the audience share of a television service providing television access services has fallen below 0.05% but remains at 0.04% or above and this is confirmed by figures for the subsequent quarter, the licensee will be required to maintain the existing level of provision in the following year, against the targets applying in the current year. In the event that the average audience share remains below .05% in the following year, the requirement to provide television access services will cease at the end

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<sup>25</sup> This means that Ofcom applies the access service requirements for new channels from the January following the first anniversary of their applicable date.

<sup>26</sup> Those channels whose relevant date falls before the end of a calendar year will be expected to start providing access services from the anniversary of that date, subject to meeting the audience threshold, unless they can demonstrate that they would be unable to meet the cost of Level 3 (or higher) obligations from 1% of their actual or projected relevant turnover.

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

- 8.6 If a service that ceases to be required to provide television access services subsequently regains the levels of audience share and / or qualifying revenue that would subject it to the requirement once more, the licensee will be required to resume provision at the appropriate level in accordance with the licensee's applicable date. Level described in paragraph 26 above. Ofcom will determine which level of annual target should apply in consultation with the licensee.
- 8.7 After carrying out a mid-year review, Ofcom will also publish a public statement indicating which channels will be required to provide access services (see paragraph 33 below) in the following calendar year
- 8.8 If, at any time, a licensee demonstrates to Ofcom's satisfaction that continuation of access service obligations would threaten the viability of its service, Ofcom may reduce, suspend or terminate those obligations.

## **Process for broadcasters**

- 8.9 Broadcasters to whom this code applies:
- a) are required to submit returns on their access service provision every six months covering the previous two quarters, for each six month period covering quarters starting from 1 January 2005, in the form and format to be notified separately by Ofcom; and
  - b) shall make and retain a recording in sound and vision in a form acceptable to Ofcom of every programme included in the service for a period of 60 days from the date of its broadcast, and provide a copy of the recording for examination and reproduction on request by Ofcom.
- 8.10 See Annex 2 for the process for requesting alternative arrangements for signing for channels with smaller audience shares.
- 8.11 Broadcasters may request exclusions from the full targets on the grounds of technical difficulty (see Technical Difficulty section). Broadcasters should do this as early in the year as possible to give time for consideration, and no later than 1 September each year.
- 8.12 Ofcom assesses broadcasters' compliance with the relevant access service requirements on an ongoing basis.

## **Review**

- 8.13 This code is subject to periodic review.

## A1. Annex 1

### Targets for Broadcasters

**A1.1** — A list of channels required to provide access services is available on Ofcom's website at [http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv\\_access\\_serv/](http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv_access_serv/).

### Public service channels

**A1.2** — For ease of reference, the BBC channels (excluding BBC Parliament) are required to subtitle 100% of their programme content, audio describe 10% of their programme content (except in the case of BBC News), and sign 5% of their content. The corresponding targets for ITV1 (including both the regional and national licensees) and Channel 4 are 90%, 5% and 10%, and for Five and S4C 80%, 5% and 10%.

### Other channels

**A1.3** — The targets applying to those channels whose relevant date is 29 December 2003 (those cable and satellite channels broadcasting when the Communications Act 2003 came into force) are set out in Table 1 below. The specific targets applying to all channels can be found in the most recent of the periodic reports published by Ofcom on its website at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/tv-access-services-reports/>.

**Table 1: Other broadcasters (Level One)**

Service/ Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Subtitling	10%	10%	35%	35%	60%	60%	70%	70%	70%	80%
Signing	1%	1%	2%	2%	3%	3%	4%	4%	4%	5%
Audio Description	2%	4%	6%	8%	10%	10%	10%	10%	10%	10%

# A1. Audience share and signing thresholds

A1.1 This annex sets out the audience share and signing thresholds for non-domestic broadcasters which Ofcom uses to determine whether channels are to be excluded from the requirement to provide access services, or subject to alternative requirements for signing (as explained in paragraph 1.25 to 1.31). Ofcom updates Annex 1 on an annual basis to ensure that the thresholds for non-domestic services represent an equivalent number of viewers to the thresholds for domestic broadcasters (0.05% audience share threshold and 1% signing threshold).

EU Member State	Audience share threshold	Signing threshold
Austria	0.39%	7.73%
Belgium	0.32%	6.37%
Bulgaria	0.33%	6.66%
Croatia	0.55%	10.95%
Cyprus	3.35%	66.96%
Czech Republic	0.28%	5.58%
Denmark	0.72%	14.4%
Estonia	2.06%	41.27%
Finland	0.66%	13.21%
France	0.05%	0.91%
Germany	0.03%	0.70%
Greece	0.21%	4.14%
Hungary	0.23%	4.59%
Iceland	23.75%	*
Ireland	0.80%	16.06%
Italy	0.04%	0.79%
Latvia	1.71%	34.22%
Lithuania	0.95%	19.00%
Luxembourg	4.83%	96.60%
Malta	5.92%	*
Netherlands	0.21%	4.19%

Norway	1.02%	20.43%
Poland	0.06%	1.24%
Portugal	0.21%	4.16%
Romania	0.10%	1.90%
Slovakia	0.47%	9.46%
Slovenia	1.39%	27.78%
Spain	0.05%	1.10%
Sweden	0.44%	8.82%
Switzerland	0.62%	12.30%
Turkey	0.04%	0.77%
United Kingdom	0.05%	1%

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



## A2. Guidance to broadcasters of channels with smaller audiences on alternative arrangements for signing

### Introduction

- A2.1 This Annex sets out guidance for broadcasters of domestic and non-domestic channels with 'smaller audience shares' which are excluded from the statutory signing targets (set out in Table 1). Paragraphs 1.26 to 1.31 explain the criteria by which Ofcom considers channels to be 'channels with smaller audience shares' and set out the alternative requirements for signing which apply by default for these channels. Broadcasters of channels with smaller audience shares who do not wish to be subject to the requirements in paragraphs 1.28 to 1.31 may propose alternatives to Ofcom and should follow the guidance set out below.
- A2.2 This Annex to the Code on Television Access Services ('the Code') sets out guidance for broadcasters of domestic and non-domestic channels with 'smaller audience shares' on signing on television. Channels with smaller audience shares are those which:
- a) are required as a result of Ofcom's mid-year review to be subject to access service obligations in the following year;
  - b) are determined by Ofcom to have had an average audience share over the preceding year below the signing threshold as set out in Annex 2 to the Code; and
  - c) are excluded under section 303(9) of the Communications Act from the targets set out in paragraph 9 of the Code on Television Access Services ('the existing obligations').
- A2.3 Ofcom expects to notify broadcasters of channels with smaller audience shares (subject to the timely provision by them of information on relevant turnover<sup>27</sup>) by 31 May each year that, as a result of the mid-year review, they will be subject to the arrangements applying to channels with an audience share below the signing threshold. For advance planning purposes, broadcasters currently subject to obligations under the Code that spend less than 1% of the relevant turnover of channels with smaller audience shares on access services should work on the premise that they will be excluded from the existing obligations and will be required to meet the new requirements described below.

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<sup>27</sup> As part of their annual information return, non-PSB licensees are required to provide data on relevant turnover for the previous year by 31 March. In accordance with the Code on Television Access Services, Ofcom will use this data together with audience share data to assess which channels will be required to provide television access services in the following year. Ofcom will aim to notify relevant channels by 31 May. Broadcasters that do not provide information on their relevant turnover by the time requested may have less notice of whether or not some or all of their channels will be subject to access service requirements.

## Regulatory requirements

- A2.4 From 1 January 2016, and in accordance with section 303(10)(c) of the Communications Act 2003, domestic channels with smaller audience shares should, from the first anniversary of the relevant date, broadcast each month no less than the minimum amounts of sign-presented programming specified in Table 2 of the Code, such programming to be shown between 7am and 11pm local time. Ofcom will keep this requirement under review.
- A2.5 From 1 January 2018, and in accordance with section 303(10)(c) of the Communications Act 2003, non-domestic channels with smaller audience shares should, from the first anniversary of the notice date, broadcast each month no less than the minimum amounts of sign-presented programming specified in the third column of Table 4 of the Code, unless Ofcom has determined that regulatory requirements (sign interpretation and extra subtitling) summarised in the fourth and fifth columns of Table 4 of the Code would better meet the needs of sign language users in the country concerned. Ofcom will keep this requirement under review.
- A2.6 Broadcasters of both domestic and non-domestic channels with smaller audience shares who wish to propose that the channels should not be subject to these regulatory requirements should follow the procedures below.

## Alternative arrangements

- A2.7 Broadcasters are not obliged to propose alternative arrangements, nor is Ofcom required to accept any proposal as a substitute for meeting the requirements set out in paragraphs 1.28 to 1.31.
- A2.8 Broadcasters may discuss possible alternative arrangements for channels with smaller audience shares with Ofcom in advance of a formal proposal, and Ofcom encourages them to do so. In any case, in order that broadcasters and / or third parties have sufficient time to plan for the implementation of alternative arrangements, **broadcasters** they should submit proposals no later than **31 July** ~~30 June~~ in the year before they wish to implement them. If they do not submit proposals by this date, broadcasters are likely to be obliged to implement the **regulatory** requirements set out in **paragraphs 1.28 to 1.31** ~~A3.3 or A3.4, as appropriate~~. Provided the proposals contain sufficient information, Ofcom will **aim** ~~endeavour~~ to decide whether **or not to accept the proposed alternative arrangements** ~~or not to impose the regulatory requirements~~ by **31 August** ~~31 July~~.
- A2.9 Ofcom will consider proposals from individual broadcasters or groups of broadcasters of both domestic and non-domestic channels with smaller audience shares for alternative

ways of achieving the objective of making more accessible programming<sup>28</sup> available to deaf or hearing-impaired sign language users. Broadcasters are not obliged to propose alternative arrangements. Nor is Ofcom required to accept that the proposal by broadcasters of any alternative arrangements will result in Ofcom not imposing the regulatory requirements. In deciding whether or not to impose the regulatory requirements in A3.3 or A3.4 on broadcasters that have submitted alternative proposals, Ofcom will have regard to the matters set out in A3.7 (a) (e) below.

A2.10 In determining whether to accept the the regulatory requirements should be imposed on broadcasters that have proposed alternative arrangements, Ofcom will consider whether they alternative arrangements would be likely to provide better assistance for deaf people using sign language, and, Ofcom will consider in particular whether the proposed alternative arrangements would: in particular whether they would:

- a) contribute to a diversity of accessible programming broadcast between 7am and 11pm;
- b) incorporate effective mechanisms for taking account of the views of deaf groups about the preferences of deaf people for accessible programming;
- c) ensure that the terms of access to programming are no less favourable to sign language users than access to the channel in respect of which alternative arrangements are proposed;
- d) amount to, or be equivalent to, an annual financial contribution in respect of each relevant channel, as set out in Table 4. This amount is subject to review from time to time; and
- e) commit the broadcaster to implement the arrangements or to contract with an acceptable party to implement the arrangements for a period of not less than two years, subject to a provision allowing the channel to discontinue the arrangements if it ceases to be subject to access service obligations.

A2.11 Ofcom has determined appropriate minimum annual levels of financial contribution to alternative arrangements. Table 4 sets out these levels for The minimum annual contribution levels provided in Table 5 above apply to all channels that have not yet reached the fourth (or later) anniversary of their relevant date (i.e. channels with an applicable a relevant date on or later than 1 January 2012). Ofcom adjusts the will publish inflation-adjusted minimum contribution levels on an annual basis for inflation. Ofcom publishes the inflation-adjusted minimum contributions for the following year on its website<sup>29</sup> at the same time as it publishes the annual list of channels required to provide television access services in the following year. At the same time, Ofcom updates Table 4 with the applicable contributions.

<sup>28</sup> Accessible programming in this context means programming with the type of assistance that Ofcom has deemed appropriate, whether that is sign presentation, sign interpretation or subtitling. In the case of the UK, Ofcom has deemed sign presentation to be the form of accessible programming usually appropriate (see paragraph 1.21 of Ofcom's 2007 Statement).

<sup>29</sup> See the Ofcom website

Table 4: Minimum annual contributions to alternative arrangements

Anniversary of applicable date relevant date or notice date	Minimum annual contributions to alternative arrangements in 2020 (from 1 January 2016 adjusted for inflation, subject to annual adjustments for inflation <sup>30</sup> )
First	£24,500 £25,971
Second	£24,500 £25,971
Third	£24,500 £25,971
Fourth	£24,500 £25,971
Fifth	£36,800 £25,971
Sixth	£36,800 £39,010
Seventh	£49,100 £39,010
Eighth	£49,100 £52,048
Ninth	£49,100 £52,048
Tenth and after	£61,400 £65,086

- A2.12 Since the minimum contribution levels were increased with effect from 1 January 2016, Ofcom applied transitional arrangements for longer-running domestic channels to avoid a sudden increase in their obligations.<sup>31</sup> Domestic channels with an applicable date a relevant date earlier than 1 January 2012 are subject to the transitional arrangements set out in Table 6 below. Ofcom adjusts the minimum contribution levels on an annual basis for inflation and updates Table 5 below accordingly. Ofcom publishes the inflation-adjusted contribution figures for the following year at the same time as it publishes the annual list of channels required to provide access services in the following year.<sup>32</sup> There are no equivalent transitional arrangements for non-domestic channels.

<sup>30</sup> The minimum annual contribution levels shown in this table are expressed in 2014 money; from 2016 onwards, Ofcom will publish inflation adjusted minimum contribution levels for the following year at the same time it publishes the annual list of channels required to provide television access services in the following year.

<sup>31</sup> See our 2015 Statement.

<sup>32</sup> See the Ofcom website

**Table 5: Transitional arrangements for domestic channels with an applicable date before 1 January 2012** certain domestic channels: minimum annual contributions towards alternative arrangements (in lieu of monthly sign-presentation requirements) (for domestic channels that have reached the fourth<sup>33</sup> - or later - anniversary of their relevant date)

Calendar Year Anniversary of qualifying date	2016	2017 <sup>34</sup>	2018	2019	2020	2021	2022 and after
Minimum annual contributions contribution in 2020, subject to annual adjustments for inflation (adjusted for inflation)	£24,500 £4.5k	£28,600 £28.6k	£37,058 £36.8k	£42,298 £40.9k	£52,048 £49.1k	£56,393 £53.2k	£65,086 £61.4k

A2.13 From 2022 onwards, the minimum annual contributions to approved alternative arrangements will be £61,400 (in 2014 money), adjusted annually to account for inflation from December 2014.

A2.14 The level of minimum annual contribution is subject to review.

A2.15 A broadcaster that has, in good faith and with Ofcom's agreement, contracted for the alternative arrangements – in lieu of the signing requirements imposed on one or more of its domestic or non-domestic channels – to be implemented by a third party shall not be required to resume the implementation of regulatory requirements set out in the Code paragraphs 1.28 to 1.32 for the duration of the paid-for period of the contract. This applies even if the third party fails to fulfil the requirements of the contract.

### Sign-interpretation or Additional Subtitling (Non-Domestic Broadcasters)

A2.16 Broadcasters of non-domestic channels with smaller audience shares may instead submit proposals to meet the targets for sign-interpretation or additional subtitling set out in Table 6 below.<sup>35</sup> When assessing proposals, Ofcom will consider in particular whether

<sup>33</sup> i.e. channels with a relevant date earlier than 1 January 2012

<sup>34</sup> From 2016 onwards, Ofcom will publish inflation-adjusted minimum contribution levels for the following year at the same time it publishes the annual list of channels required to provide television access services in the following year.

<sup>35</sup> As with the statutory targets (see para 1.16), the targets are to be interpreted as percentages of programme hours in a year, including all programmes other than advertisements and programmes that have been excluded by reference to the factors set out in in the Exclusions and Alternative Requirements section

sign language users in target countries would prefer another form of assistance instead of sign-presented programming.

**Table 6: Alternative Arrangements for Non-Domestic Channels with smaller audience shares**

Anniversary of applicable date	First	Second	Third	Fourth	Fifth	Sixth	Seventh	Eighth	Ninth	Tenth onwards
Annual targets for sign- interpretation	1%	1%	2%	2%	3%	3%	4%	4%	4%	5%
Or annual targets for additional subtitling <sup>36</sup>	5%	5%	7.5%	7.5%	10%	10%	12.5%	12.5%	12.5%	15%

<sup>36</sup> These targets apply in addition to the subtitling requirements set out in Table 1.