



Signing on television

New arrangements for low audience channels

Statement

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Section 1

Executive Summary

Introduction

- 1.1 Research findings published by Ofcom last year suggested that very few hearing-impaired people who can use sign language to watch television benefit from sign-interpreted programmes on low audience channels. As a result, Ofcom began a process of talking to broadcasters and groups representing the interests of deaf people ('deaf groups'). Our aim was to see whether arrangements could be put in place that would better meet the needs of sign language users. This document explains what the current arrangements are, and explains why Ofcom considered it necessary to examine whether different arrangements should be put in place. It also describes the process of consultation with deaf groups and broadcasters, the outcome of that process, and Ofcom's decisions.
- 1.2 Since the process leading to these decisions has been a thorough and lengthy one, and many of the issues have raised legal and financial issues, this document is necessarily long, and, in places, complex. Full details of Ofcom's considerations are set out later in this document. A short plain English summary has been published, and can be found on our website at <http://www.ofcom.org.uk/consult/condocs/signing/statement/plain>.
- 1.3 There are two approaches to signing on television. Sign-interpreted programmes show a signer, usually in the corner of the screen, who interprets what is happening in the main picture. Sign-presented programmes are presented in sign language, and dubbed in English, often with subtitles. There are currently very few examples of this -the most well-known example is the BBC's See Hear programme.

Code on Television Access Services

- 1.4 Under the Communications Act ('the Act'), Ofcom's duties are to further the interests of citizens in relation to communications matters and consumers in relevant markets. In performing its duties, Ofcom must have regard to the needs of persons with disabilities (section 3 (4) of the Act).
- 1.5 Under section 303 of the Act, Ofcom has a specific duty to draw up, and from time to time, review and revise a code giving guidance as to the extent to which broadcasters should promote the understanding and enjoyment of television by the deaf or hard of hearing, the blind or partially sighted and those with a dual sensory impairment; and as to the means of promoting such understanding and enjoyment. Access to television programmes is to be provided by means of subtitling, signing and audio description (described collectively as 'access services').
- 1.6 In July 2004, in accordance with its obligations under section 303 of the Communications Act 2003 ('the Act'), Ofcom published a Code on Television Access Services. At the same time, we explained that we would review the Code within two years to see what changes might be appropriate in the light of experience.
- 1.7 In 2005, Ofcom commissioned research to help inform its first review of the Code. Our objectives, established after discussion with disability groups, broadcasters and access service providers, were to establish how many people stood to benefit from

the different access services, to look at usage and barriers to use, and to understand the needs and preferences of users and potential users.

Findings about signing on TV

- 1.8 In March 2006, we published this research alongside a review of the Code, and of related guidance¹. One of the findings was that about 66,000 people had a reasonable understanding of sign language. In qualitative case studies, two thirds of hearing-impaired people with the strongest signing skills expressed a preference for subtitling over signing. We suggested that there was a distinct possibility, therefore, that the number of people actually relying upon signing to watch television is significantly smaller than the number of people who said they understood signing well enough to use it to watch television. Moreover, the number of people likely to be using signing to watch programmes on low audience channels was likely to be very small indeed.
- 1.9 Given this, Ofcom concluded that it was unlikely that the current obligations on low audience channels were proving particularly effective in terms of the costs being incurred in fulfilling them, the number of people likely to benefit and the extent of that benefit. We said that further discussion was required with sign language users and broadcasters about whether continuing with the current arrangements was appropriate for those channels. Subsections (7) and (9) of section 303 of the Act allow Ofcom to exclude channels from the current signing obligations on a case by case basis, having had regard to specific criteria set out in subsection (8), including the cost and extent of the benefit conferred by the assistance. In such cases, Ofcom may impose alternative requirements with respect to the provision of assistance for the deaf.
- 1.10 Accordingly, we said we would explore whether there were alternatives to the arrangements that currently apply to low audience channels that might better meet the needs of sign language users. We noted that none of the alternatives were likely to be without both advantages and disadvantages, and these would need to be thoroughly aired. We said that we expected to carry out a further consultation in the light of discussion with and feedback from interested parties.
- 1.11 Under the arrangements set out in section 303(5) of the Act, broadcasters have a choice of whether to meet their targets with sign-interpreted or sign-presented programmes. They invariably use sign-interpreted programmes, which are much cheaper to produce than sign-presented programmes. In discussions with Ofcom, deaf groups told us that, in preference to sign-interpreted programmes on low audience channels, they would prefer to see the resources directed towards making more sign-presented programmes available. Broadcasters told Ofcom that they did not favour the idea of providing sign-presented programmes. They cited a variety of reasons, including the cost and the lack of appeal to mainstream audiences.
- 1.12 However, in the summer of 2006, a proposal was made by Sky and the Community Channel that broadcasters contribute to the costs of a sign zone on the Community Channel (in lieu of signing on their own channels). This attracted interest from both broadcasters and deaf groups. A seminar with deaf groups and broadcasters in November 2006 failed to secure consensus but Ofcom invited a Sign Language Working Group largely comprised of deaf people and groups to make recommendations that could be delivered would be within the framework of current

¹ *Television access services: review of the Code and guidance*, Ofcom, 23 March 2006 [‘2006 Code Review’] (<http://www.ofcom.org.uk/consult/condocs/accessservs/access.pdf>)

legislation. The working group recommended in essence that the Sky / Community Channel proposal be pursued, and that funds contributed by broadcasters be administered by a Trust on which deaf people were strongly represented.

Consultation

- 1.13 On 10 May 2007, Ofcom published a consultation document² seeking views from stakeholders on three specific matters:
- a) firstly, on Ofcom's proposals to determine that some low-audience channels should be excluded from their current obligations for sign-interpreted programming on the basis of evidence suggesting that the costs incurred produce little or no benefit to the audience for access services;
 - b) secondly, to consider whether Ofcom should impose alternative arrangements on those excluded services to provide greater benefit to audiences; and if so
 - c) thirdly, to propose that when deciding whether to impose alternative arrangements, Ofcom should take into account any voluntary arrangements that have been entered into by those excluded services in order to provide other more effective and beneficial assistance for the disabled in the form of sign-presented programmes, either on those channels or in other ways (e.g. a sign zone on the Community Channel).
- 1.14 In response to broadcasters' requests for more detail on the Community Channel's proposal to host a sign zone, a briefing for broadcasters was provided by the channel. Ofcom extended the consultation period to 27 July 2007 to allow further time for broadcasters to take this into account in their responses.

Assessment of responses

- 1.15 There were several responses from individuals, some of them sign language users. There were also responses from a wide range of groups representing the interests of deaf people, as well as many broadcasters and several companies providing access services for television programmes. With the exception of a few confidential submissions, all these have been posted on our website. We have taken all the responses into account in formulating our conclusions. Ofcom has also had regard to responses to the consultation carried out by the Sign Language Working Group amongst deaf groups³.
- 1.16 Deaf groups supported proposals for low audience channels that would result in sign-interpretation being replaced by a smaller amount of sign-presented programming at more convenient times. However, most hoped that broadcasters would participate in alternative arrangements such as the proposed sign zone on the Community Channel, as they felt that this would provide a more convenient destination, and provide a greater opportunity for sign language users to participate in the selection, scheduling and production of programmes for deaf people. Deaf groups were also concerned that any new arrangements should not prejudice the amount of subtitling on television;

² *Signing on television: proposed changes*, 10 May 2007, Ofcom ['2007 Signing Proposals'] (<http://www.ofcom.org.uk/consult/condocs/signing/signing.pdf>).

³ These comments were summarised in the Appendix to the working group's report, published in Annex 6 of the 2007 Signing Proposals.

- 1.17 Broadcasters in general agreed that it was unlikely that many sign language users watched sign-interpreted programming on low audience channels, though some argued that Ofcom had not made the case that change was appropriate. Many were attracted to the idea of contributing to a sign zone on the Community Channel. But most wanted this to be a voluntary alternative to sign-interpretation. Few of them liked the idea of providing sign-presented programmes on their own channels; most felt that the costs had been under-estimated and would be disproportionate to the benefits and that it was unreasonable to require that it be shown between 7am and 11pm. Some broadcasters felt that low audience channels should not have to do any signing.
- 1.18 Ofcom's response to these and other points made by consultees is set out in more detail in section 4 and Annex 1.
- 1.19 As regards the key points made by deaf groups, we agree that a sign zone on the Community Channel could provide a suitable alternative to sign-presented programming on individual channel. However, Ofcom is not in a position to mandate governance arrangements that would give deaf people control over funding for such a zone. Ofcom is also ready to consider other arrangements that may be proposed by broadcasters in lieu of imposing Ofcom's alternative requirements on them. We do not believe that the amount of subtitling on television should be significantly affected by the new arrangements, but we shall review the results in the light of experience.
- 1.20 In relation to the points made by broadcasters, Ofcom believes that it has demonstrated that very few hearing-impaired sign language users benefit from sign-interpretation on low audience channels. Thus, in terms of the criteria set out in the Communications Act, continuation of these arrangements is not justified. We have considered whether low audience channels should be exempted altogether, but have concluded for the reasons set out in section 4 that they should provide a small amount of sign-presented programming between 7am and 11pm. In reaching this decision, Ofcom has taken account of the strong desire of deaf groups for more sign-presented programming, and is satisfied that the provision of such programming on low audience channels would be more beneficial than the current arrangements. We agree that it is important not to impose disproportionate burdens on broadcasters, but do not agree that the cost assumptions Ofcom has adopted are unreasonable. We consider that continuing to apply the expenditure limit of 1% of relevant turnover as the maximum share that broadcasters should spend on the provision of the different types of access services will help to prevent disproportionate burdens being placed on broadcasters; as now, broadcasters which in Ofcom's judgement would exceed this limit will be subject to reduced obligations or exempted altogether.

Ofcom's decisions

- 1.21 Ofcom has decided, with effect from 1 January 2009:
- a) to exclude channels with an audience share of between 0.05% and 1% other than public service channels from obligations to meet the signing targets set out in the Code on Television Access Services;
 - b) to require excluded channels to transmit a minimum of 30 minutes of sign-presented programming each month between 7am and 11pm. This amount will be kept under review;
 - c) to apply (a) and (b) flexibly in the light of criteria set out in section 303(8) of the Act, which enable it to take account of matters such as the benefits to deaf

people. For instance, this would enable Ofcom to require a news channel with an audience share of just less than 1% to continue providing sign-interpretation if it was satisfied this would be better for deaf people using sign language. Equally, it would enable Ofcom to require a film channel with an audience share just above 1% to discontinue providing sign-interpretation if it was satisfied that deaf people would benefit more from sign-presented programmes on the channel;

- d) not to impose the requirements in (b) above if it is satisfied that alternative arrangements proposed by broadcasters would be likely to provide better assistance for deaf people using sign language, such that the requirements under (b) need not be imposed. Ofcom has set out guidance for broadcasters on the matters it would take account in determining whether alternative arrangements are acceptable (see Annex 3).

- 1.22 Ofcom has amended the Code on Television Access Services as shown in Annex 2 to give effect to these decisions. It will carry out a review in the light of experience of the new arrangements, with the aim of enabling any changes that may be appropriate to be implemented at or before digital switchover.

Structure of this document

- 1.23 Section 2 sets out the legal framework for provisions on signing on television. The background to Ofcom's consultation and the proposals consulted on are set out in section 3. The responses to Ofcom's consultation together with our assessment of the points raised are summarised in section 4, with a more detailed summary in Annex 1. Section 5 sets out Ofcom's decisions in full. Annex 2 shows the changes that are to be made to the Code on Television Access Services and Annex 3 provides guidance to broadcasters of low audience channels on the arrangements for signing that will come into force with effect from 1 January 2009.

Section 2

Legal framework

Introduction

- 2.1 This section sets out the legal framework within which Ofcom has reviewed signing arrangements for television services.

Ofcom's duties

- 2.2 Ofcom has a general duty under the Act to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets, where appropriate by promoting competition (section 3(1)). In performing that duty, Ofcom is required, amongst other things, to have regard to the needs of people with disabilities (section 3(4)(i)) and to have regard to the opinions of consumers in relevant markets and of members of the public generally (section 3(4)(k)). Ofcom must also have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (section 3(3)).
- 2.3 Section 303 of the Act places a specific duty on Ofcom to draw up, and from time to time, review and revise a code giving guidance as to the extent to which broadcasters should promote the understanding and enjoyment of television by the deaf or hard of hearing, the blind or partially sighted and those with a dual sensory impairment; and as to the means of promoting such understanding and enjoyment. Access to programme services is to be provided by means of subtitling, signing and audio description.

Provisions relating to the Code

- 2.4 Section 303 (2) of the Act requires that the Code include provision for securing that every provider of a service to which the section applies⁴ ensures that adequate information about the assistance for disabled people provided in relation to that service is made available to those who are likely to want to make use of it.
- 2.5 Section 303 (3) to (5) sets out the dates by which certain statutory obligations must be fulfilled in relation to subtitling, audio-description and sign language. Amongst these are that by the fifth anniversary of the relevant date⁵ at least 60% of so much of every service consisting of programmes that are not excluded programmes must be accompanied by subtitling and similarly by the tenth anniversary in relation to every such service, at least 5% must be presented in, or translated into, sign language.
- 2.6 Under section 303 (7), Ofcom's Code is required to set out what descriptions of programmes it considers should be excluded from the statutory requirements set out in section 303 (4) and (5) of the Act. In deciding which should be excluded, Ofcom must have regard in particular, to:

⁴ This includes digital services operated by the Welsh Authority, any licensed public service channel (ITV1, GMTV, Channel 4, and Five), any digital television programme service, any television licensable content service and any restricted television service.

⁵ For a full definition of 'relevant date', see section 305 of the Act.

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

2.7 Section 303 (9) provides that the exclusions that may be set out in the Code:

- a) may include different descriptions of programmes in relation to different services to which section 303 applies; and
- b) in the case of a service which Ofcom is satisfied (having regard to the matters mentioned in section 303 (8)), is a special case, may include all the programmes included in the service.

2.8 Notwithstanding the provision for excluding programmes, section 303 (10) makes clear that the Code may also include “requirements with respect to the provision of assistance for disabled people, in relation to excluded programmes, or in relation to a particular description of them”.

Section 3

Review of signing arrangements

Background

- 3.1 The effect of section 303 of the Act was to extend the previous arrangements for access services on public service and digital terrestrial channels to other channels available by cable and satellite. Unless excluded by Ofcom (having regard to the criteria set out in paragraph 2.6 above), such channels were required to sign 5% of their output within ten years of the relevant date (see footnote 4). The relevant date for those channels broadcasting at the time section 303 came into force was 29 December 2003. For channels that started broadcasting after that date, the relevant date is the date that they started broadcasting.
- 3.2 In its proposals for a Code on Television Access Services⁶, Ofcom took account of the Government's aim to broaden access to cultural and recreational resources, and to promote social inclusion. It also took account of the Government's observation that extending access service requirements to cable and satellite broadcasters would create a level playing field for all broadcasters, and ensure access for all viewers, regardless of the delivery platform.
- 3.3 Ofcom is required to take account of a number of factors set out in section 303(8) of the Act when deciding whether or not to exclude programmes or services from the arrangements set out in section 303(5). One of these factors is the number of persons who would be likely to benefit from television access services (section 303(8)(a) to (c) of the Act). Ofcom suggested that, in the absence of reliable data on the number of persons who would be likely to benefit from television access services, a reasonable proxy would be the audience share for channels. It also noted that the Government's regulatory impact assessment assumed that television channels with an audience share of 0.05% or more would be required to provide television access services, and said that it proposed to adopt the same level⁷. Amongst those who responded to the consultation on this point, there was general, though not universal, agreement that audience share was a reasonable proxy for audience benefits, or at least that there was no better proxy.
- 3.4 Having regard to consultation responses, Ofcom concluded that:
- a) audience share was 'a suitable proxy for those factors relating to audience benefit set out in section 303(a) to (c)'; and
 - b) the proposed audience share threshold of 0.05% continued to command general support, struck a reasonable balance and that there were no better arguments pointing to a different level.
- 3.5 Ofcom acknowledged that there would be merit in researching other ways of assessing the number of persons likely to benefit from television access services,

⁶ *Consultation on the draft code on providing television access services* ['2003 Code Consultation'], Ofcom, December 2003 (<http://www.ofcom.org.uk/consult/condocs/consultation/access.pdf>).

⁷ 2003 Code Consultation.

and the extent of the likely benefit in each case, and restated the intention to review the code within two years, and to carry out research in time for that review⁸.

- 3.6 Ofcom also noted that the cost of providing television access services (a factor set out in section 303(8)(f) of the Act) was also an important consideration. Ofcom suggested that, given its general duty to secure the availability of a wide range of television services, it would not be appropriate to force providers to leave the market if they could not afford to provide television access services. We suggested that the most practicable proxy for affordability would be the gross revenues of broadcasters, and that the Code should not require broadcasters to spend more than 1% of their gross revenue on television access services⁹. However, the draft Code said that Ofcom might reduce, suspend or terminate access service obligations if, at any time, a licensee demonstrated to Ofcom's satisfaction that continuation of those obligations would threaten the viability of its service.
- 3.7 Following consultation, Ofcom confirmed this approach. Each year, Ofcom publishes a list of television channels required to provide access services in the following year. This is based on audience share and revenue data from the previous year. In 2007, some 90 channels (many of which have an audience share of less than 1%) are required to provide some signing¹⁰. Most of these channels are currently required to broadcast 175 hours of signed programmes a year (representing 2% of output); from 2009, this will rise to 260 hours (3%), and eventually to 440 hours (5%).

Television Access Services Review

- 3.8 In preparation for its planned review of the Code on Television Access Services, Ofcom commissioned independent research on the numbers of people who might benefit from access services, how many used them, and what their experiences were. This research suggested, amongst other things, that:
- a) about 66,000 people claimed a knowledge of signing which could enable them to use it to watch television with signing;
 - b) about 44,000 people who claimed the same knowledge of signing also claimed to have used signing to watch television occasionally;
 - c) amongst the hearing impaired claiming the same knowledge of signing, two thirds preferred subtitling;
 - d) there was some evidence that people with a severe or profound hearing impairment are more likely to use signing to watch television than those with a moderate or mild impairment. Qualitative case studies found that, amongst people with a hearing impairment who were aware of signing on TV, 11% said that they used signing to watch all, most or some programmes, a figure that rose to 31% for those with a severe or profound impairment; and
 - e) data from the quantitative study indicated that about 11,000 people with a moderate to profound hearing impairment, with some knowledge of sign language, claimed to have used sign language to watch television.

⁸ Annex 2, *Statement on Code on Television Access Services*, July 2004 ['2004 Code Statement'] (http://www.ofcom.org.uk/consult/condocs/tv_access_services/statement2/statement.pdf),

⁹ 2006 Code Review.

¹⁰ *Television channels required to provide television access services in 2007*, Ofcom, July (2006 http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tv_access_statement07/).

- 3.9 In discussing the research, Ofcom noted that the sample sizes were not sufficient to do meaningful analysis of other permutations (e.g. the number of people with a knowledge of sign language which could enable them to use it to watch television with signing, and who claimed to use signing to watch television). However, the evidence suggested that the actual number of people using sign language to watch television could well be smaller than those with a sufficient knowledge of sign language (about 66,000 people).
- 3.10 Ofcom noted that the fact that the proportion of the UK population using sign language was very small was not a reason why signed television should not be provided, since Parliament was aware that relatively few people knew sign language when it enacted the Communications Act 2003. Ofcom expressed concern that the small numbers of people watching sign-interpreted programmes mean that those channels attracting very small audience shares (almost all the cable and satellite channels) may be attracting very few viewers (if any) to their signed programmes. Ofcom said that the evidence suggested that the current approach was not meeting the needs of sign language users in general, and that it imposes costs on smaller broadcasters that do not give rise to any significant benefits. Ofcom therefore invited views on whether the current arrangements for signing should be reviewed, to see if there were better ways of meeting the needs of sign language users¹¹.
- 3.11 There was general agreement from deaf groups, broadcasters and others who commented that signing arrangements should be reviewed. In response, Ofcom said that it would continue a dialogue with deaf groups and broadcasters on whether there were better ways of meeting the needs of sign language users. It said that it expected to consult on proposals later in the year, with a view to any different arrangements being implemented with effect from the beginning of 2008¹².

Dialogue with stakeholders

- 3.12 Over the Spring and Summer of 2006, Ofcom held discussions with both broadcasters and deaf groups. At a meeting in May, deaf groups told us that they would like to see more sign-presented programmes on television channels (like the BBC's *See Hear* programme), and would accept a reduction in the amount of sign-presented programmes in order to achieve this.
- 3.13 In meetings with a wide range of broadcasters during May and June, almost all told Ofcom that they did not like the idea of scheduling a smaller amount of sign-presented programming in place of sign-interpreted content. Two of the main reasons were that even a smaller quantity of sign-presented programming would cost them more than meeting their targets with sign-interpretation, and that sign-presented programming would have little or no appeal to mainstream audiences.
- 3.14 Ofcom decided to defer a consultation on future arrangements for signing in the light of proposals made in Summer 2006 by Sky and the Community Channel for a scheme under which cable and satellite broadcasters would support a sign zone for sign-presented programmes on the Community Channel in lieu of their current statutory requirements for signing (sign-interpreted programmes) on individual channels. In November 2006, Sky facilitated a meeting of deaf groups and individuals, as well as broadcasters, to discuss this proposition. In the absence of a conclusive outcome, Ofcom invited deaf people and groups representing their

¹¹ 2006 Code Review

¹² *Television Access Services Review – Statement*, Ofcom, 27 September 2006 [‘2006 Review statement’] (<http://www.ofcom.org.uk/tv/ifi/codes/statement/ars.pdf>).

interests to make recommendations on what could be done within the existing legal framework to better meet the needs of sign language users. The working group reported at the end of February 2007, recommending that a sign zone on the Community Channel along the lines proposed by Sky and the Community Channel be pursued¹³.

Consultation

- 3.15 In May 2007, Ofcom published proposals for changes to the arrangements for signing on low audience channels, and invited views. In response to broadcasters' requests for more detail on the Community Channel's proposal to host a sign zone, a briefing for broadcasters was provided by the channel. Ofcom extended the consultation period to 27 July 2007 to allow further time for broadcasters to take this into account in their responses¹⁴.
- 3.16 Ofcom explained in the consultation document that, in the light of the qualitative and quantitative research undertaken for the access services review and the feedback received from sign language users and groups representing their interests, it had reviewed whether there was a case for excluding some additional low-audience channels (i.e. those with an audience share of more than 0.05% but less than 1%), from the statutory requirement to meet the targets set out in section 303(5).
- 3.17 Ofcom explained that it had considered this evidence, its general duties, and the relevant statutory criteria (section 303 (8) of the Act), in particular:
- a) the extent of the benefit conferred by the provision of the current statutory obligations in relation to those services;
 - b) the size of the intended audience for those programmes/services;
 - c) the number of persons likely to benefit from the assistance and the extent of the likely benefit in each case; and
 - d) the cost, in the context of these matters, of providing the assistance.
- 3.18 In the light of these factors, Ofcom considered there was a case for excluding additional low audience channels from the statutory requirements set out in section 303(5). We also said that if they were excluded, consideration should be given to whether it would be appropriate to impose alternative requirements under section 303(10) of the Act in relation to those low audience services.

Ofcom's proposed policy objectives

- 3.19 Ofcom said it 'considered that both the research evidence and feedback from hearing-impaired sign language users and groups representing their interests demonstrate that they benefited little from sign-interpreted programmes on low audience channels, and that their interests and needs would be better served by provision of more sign-presented programming (even at the expense of a significant reduction in the amount of sign-interpreted programming)'.

¹³ Groups represented on the working group included the British Deaf Association, the Deaf Broadcasting Council, the Royal National Institute for the Deaf, the Royal Association for Deaf People, the National Deaf Children's Society and the Telecommunications Action Group. The full membership and the working group's report can be found in Annex 6 of the 2007 Signing Proposals.

¹⁴ See Annex 6 to the 2007 Signing Proposals.

- 3.20 In light of the evidence summarised in the consultation paper and having regard to its statutory duties, Ofcom said that it considered that its policy objectives should be:
- a) to exclude low audience channels from the existing obligations under the Act on the basis of the statutory criteria; and
 - b) to identify and secure alternatives that would:
 - i) better meet the needs of sign language users;
 - ii) not impose disproportionate burdens on broadcasters;
 - iii) not disadvantage analogue-only sign language users;
 - iv) not result in a significant reduction in the amount of subtitling,
- and that, in the light of the clear preference of sign language users for sign-presented programmes, these alternative arrangements should aim to increase the amount of sign-presented programming on television, even if this results in a reduction in the amount of sign-interpreted programming.

- 3.21 Consultees were asked whether they agreed that these were appropriate policy objectives for Ofcom in considering possible alternative arrangements for signing on television.

Options considered

- 3.22 Ofcom explained that it had considered a number of other suggestions that were put to it, and concluded that they were not appropriate, for the reasons set out below:
- a) some broadcasters had suggested that the small size of the signing population made it unreasonable to require low audience channels to provide signing. They argued that it would be appropriate to drop the requirement, without putting any alternative arrangements in place. Ofcom said that while it accepted the number of people served by signing is comparatively small, the fact that the proportion of the UK population using sign language is very small is not a reason why signed television should not be provided – when Parliament enacted the Communications Act, it was aware that relatively few people use sign language. Moreover, this approach would not help to achieve the policy objectives referred to in paragraph 3.20 above;
 - b) it was suggested that some or all of the public service channels should be excluded from the requirement to meet the current signing targets. Ofcom explained that, from a legal perspective, it was not satisfied (having regard to the criteria in section 303) that any of these channels would qualify as a special case. It argued that retention of the current arrangements would ensure that viewers on all platforms continue to have access to a wide range of signed programmes on channels accounting for two thirds of viewing. It would also mean that analogue-only viewers could continue to have access to a variety of signed programmes; and
 - c) deaf groups suggested that broadcasters be encouraged to allocate the resources they currently allocate to sign-interpreted programmes to make sign-presented programmes. It was clear from the discussions that Ofcom held with a

wide range of broadcasters that there was little or no appetite to do this on a voluntary basis.

- 3.23 Ofcom invited consultees to say whether or not they agreed with its reasons for rejecting the suggestions summarised in paragraph 3.22.
- 3.24 The consultation paper went on to explain that, given Ofcom's policy objectives and the evidence and analysis set out in the paper, it had considered the following options:
- a) retaining the present arrangements for signing on television (i.e. not applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes) (Option 1);
 - b) applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes but requiring them to substitute additional subtitling for their current signing requirements (Option 2); and
 - c) applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes, and imposing a requirement on those channels to make a smaller amount of sign-presented programmes unless acceptable alternative arrangements are in place, for example participation in a sign zone on the Community Channel, as proposed by Sky and the Community Channel (Option 3).

Ofcom's proposals

- 3.25 Having considered the suggestions summarised in paragraph 3.22 and the options described in paragraph 3.24 above, Ofcom:
- a) proposed not to exclude public service channels from the current arrangements, on the grounds that Ofcom was not satisfied (having regard to the criteria in section 303(8)) that any of the public service channels would qualify as a special case; that this would deprive analogue-only viewers of access to signed programmes; and that retention of the current arrangements would ensure that viewers on all platforms continued to have access to a wide range of signed programmes on channels accounting for two thirds of viewing;
 - b) said that it would not expect to exclude channels with an audience share of 1% or more from the current arrangements, though in the case of channels with an audience share of just less or just more than 1%, it would exercise its discretion as to whether or not it was appropriate to exclude any particular channel, having regard to the criteria under section 303(8);
 - c) would expect, having particular regard in each case to the criteria in section 303(8) of the Act, to exclude channels with an audience share of less than 1% from the obligation to meet the targets set out in the Code on Television Access Services, and instead substitute alternative requirements;
 - d) proposed that excluded channels should be required to broadcast sign-presented programming in one or more regular slots at least once a month between 7am and 11pm. The minimum duration of such programming would be 30 minutes on each channel from the first to the fifth anniversary of its relevant date, 45 minutes

from the fifth to the seventh anniversary and 60 minutes from the seventh anniversary;

- e) said that it would not be minded to apply any such requirements on any channel that had entered into any voluntary arrangements that would provide what Ofcom considers to be an acceptable alternative (such as the proposed Community Channel scheme described above);
- f) proposed to make the consequential changes to the Code on Television Access Services; and
- g) proposed to review the new arrangements after they have been in place for 12 months. The review would cover the working of any alternative arrangements entered into on a voluntary basis, as well as the requirements otherwise imposed by Ofcom, together with any other relevant issues.

3.26 Consultees were invited to say whether they agreed with these proposals. Their responses to this and other consultation questions is summarised in section 4 and set out more fully in Annex 1.

Section 4

Consultation responses and Ofcom's assessment

Introduction

- 4.1 There were a number of responses from individuals, some of them sign language users. Groups representing the interests of deaf people included Becoming Visible, the British Deaf Association, the Deaf Studies Trust, the Royal National Institute for the Deaf, TAG and VeeSeeTV. Several broadcasters also commented, including the BBC, BSkyB, Channel 4, Discovery, Five, Information TV, ITV, Nickelodeon, Playboy TV, S4C and three other multi-channel broadcasters), as well as the Satellite and Cable Broadcasting Group (representing a variety of non-public service channels). In addition, there were responses from access service providers ITFC, ITV SignPost and Red Bee Media.
- 4.2 With the exception of a few confidential submissions, all these have been posted on our website. We have taken all the responses into account in formulating our conclusions. Ofcom has also had regard to responses to the consultation carried out by the Sign Language Working Group amongst deaf groups¹⁵.
- 4.3 A detailed summary of points made in the submissions, as well as Ofcom's response to those points, is given in Annex 1. The summary below deals with the main issues raised in Ofcom's consultation paper, and those raised by consultees.

Policy objectives

- 4.4 In the consultation document, Ofcom proposed to have regard to the policy objectives set out in paragraph 3.20 above, and suggested that the aims should be:
- a) to exclude low audience channels from the existing obligations under the Act on the basis of the statutory criteria; and
 - b) to identify and secure alternatives that would:
 - i) better meet the needs of sign language users;
 - ii) not impose disproportionate burdens on broadcasters;
 - iii) not disadvantage analogue-only sign language users;
 - iv) not result in a significant reduction in the amount of subtitling

and, in the light of the clear preference of sign language users for sign-presented programmes, to increase the amount of sign-presented programming on television even if this results in a reduction in the amount of sign-interpreted programming. We now consider the arguments advanced by some consultees that these objectives, or some of them, are not appropriate.

¹⁵ These comments were summarised in the Appendix to the working group's report, published in Annex 6 of the 2007 Signing Proposals.

Exclusion of low audience channels

- 4.5 Several broadcasters and some access service providers suggested that Ofcom did not have sufficient evidence to justify changes to the current arrangements, which lead to broadcasters meeting the current statutory obligations by scheduling sign-interpreted programmes. They called on Ofcom to commission further research.
- 4.6 Ofcom notes that there was general agreement on the part of consultees with the conclusions of the independent research commissioned by Ofcom for its 2006 Code Review that very few sign language users watch sign-interpreted programmes on low audience channels. In the light of the evidence from this research (referred to in paragraphs 3.8 to 3.9 above), Ofcom considers that, given that there are relatively few sign language users in the general population, it is probable that low audience channels will attract very few of these viewers. It follows that very few sign language users benefit from the existing obligations on low audience channels. Ofcom does not consider that further research would alter this conclusion, and therefore does not agree that it would be helpful to commission further research on this point.
- 4.7 One access service provider suggested that Ofcom look at ways of improving the attractiveness of sign-interpreted programming before considering a 'radical reduction' in the amount of sign-interpreted programmes. It suggested increasing the size of the on-screen signer and scheduling sign-interpreted programmes at more convenient times.
- 4.8 Ofcom does not consider that the impact on sign language users of its proposals would be as radical as is suggested; the effect would be that sign-interpreted programmes would continue to be broadcast as at present on channels accounting for almost 80% of viewing by UK households.
- 4.9 Moreover, Ofcom does not consider that the ideas suggested by the access service provider are likely to be effective in improving the attraction of sign-interpreted programmes. The consultation on the access services review revealed no consensus in support of an increase in the size of the signer, given that this would inevitably obscure more of the picture. As regards scheduling, section 303(5) would not allow the Code to oblige broadcasters to schedule sign-interpreted programmes at more convenient times. It is unlikely that broadcasters would agree to do so voluntarily, given that they are opposed to proposals that would require any excluded channels to schedule a much smaller amount of sign-presented programming between 7am and 11pm.
- 4.10 One public service broadcaster said that it saw no justification for the 1% audience share threshold. It said that it was unclear what benefit there would be in forcing the seven non-public service channels with an audience share above 1% to continue providing sign-interpreted programmes. If these channels were allowed to contribute to a sign zone, they could bolster its position; conversely, as the audiences of other channels grow, there was a risk that over time, fewer channels would be able to support the sign zone.
- 4.11 In making decisions about whether to exclude any programmes or channels from the current statutory obligations, Ofcom must have regard to the criteria set out in section 303(8) of the Act, in particular those set out in paragraph 3.17 above.
- 4.12 Because of near universal free access to the analogue public service channels, and very widespread access to the digital public service channels, the majority of sign language users are able to view public service channels accounting for a majority of

viewing by UK households. The public service remit of these channels means that sign language users have access to a much wider variety and range of genres of high quality programming, and a higher proportion of UK originated programming, than is available from other channels. Taking these factors into account, Ofcom is not satisfied that it would be appropriate to exclude them from the current arrangements, having regard in particular to the number of persons likely to benefit from the assistance and the extent of the benefit in each case (section 303(8)(c)).

4.13 Channels with an audience share of 1%, whether public service channels or not, by definition, offer programmes that are more appealing to viewers than those offered by niche channels with smaller audiences. In the absence of evidence to the contrary, Ofcom considers it probable that sign language users will have similar tastes to other viewers, and that larger audience channels will attract larger numbers of sign language viewers than lower audience viewers. Taking these factors into account, Ofcom is not satisfied that it would be appropriate to exclude them from the current arrangements, having regard in particular to the number of persons likely to benefit from the assistance and the extent of the benefit in each case (section 303(8)(c)).

4.14 However, given the indications that sign-interpretation may confer more or less benefit in some cases (for example, feedback from deaf groups suggests that it may be more helpful to have sign-interpretation on news channels and less helpful to have it on film channels), Ofcom recognises that exceptions to this general approach may be appropriate, in the light of the criteria in section 303(8). Ofcom made clear in paragraph 3.22 of the consultation paper that in the case of channels with an audience share of just less or just more than 1%, it would exercise its discretion as to whether or not it was appropriate to exclude any particular channel, having regard to the criteria in section 303(8). Moreover, in the light of experience, it may be appropriate to make changes to this arrangement, including changes to the threshold. Ofcom has also made clear that it expects to review the arrangements in due course, and this will enable it to take account of the experiences of both sign language users and broadcasters.

4.15 Having regard in particular to the factors set out in section 303(8) of the Act, Ofcom is therefore satisfied that:

- a) sign-interpretation is unlikely, in most cases, to be an effective means for low audience channels to promote the understanding and enjoyment of television by sign-language users; and
- b) it would be appropriate, pending a review in the light of experience, to seek exclude channels with an audience share of less than 1% from the current arrangements; and

that accordingly, it would be appropriate to exclude low audience channels from the existing obligations under the Act on the basis of the statutory criteria.

Better meeting the needs of sign language users

4.16 While few consultees argued that it would be inappropriate to identify and secure alternatives that would better meet the need of sign language users, some broadcasters did suggest that it would be more appropriate for low audience channels to be relieved of signing obligations altogether. One broadcaster, referring to the point made by Ofcom that Parliament was aware of the low number of sign language users when it enacted the legislation, said the only reference that Ofcom had put forward to support it was a single speech in a House of Lords debate that

was actually on a separate clause of the Bill. The broadcaster said that there was no explicit Parliamentary debate on the signing provisions, and that even if Parliament had passed the legislation in the belief that there were around 50,000 sign language users, Ofcom's research had demonstrated that the number of people who have a hearing disability and are able to use signing to help them watch television is around a fifth of that number.

- 4.17 Ofcom disagrees with these views. Contrary to the suggestion by the broadcaster who commented on this issue, Ofcom's research found that about 66,000 people claimed a sufficient knowledge of sign language to use it to watch television, though fewer said they had done so. As regards the argument that, given the small numbers of sign language users, it is disproportionate to require low audience channels to do anything for them, we remain of the view, set out in paragraph 3.18(a) of the consultation document, that Parliament enacted the requirements in section 303 of the Act in the full knowledge that the number of sign language users is small. It is clear from the debate cited by Ofcom¹⁶ that the number of sign language users was raised in the context of television access services. We infer from the absence of Parliamentary debate on the signing provisions that they were uncontroversial so far as the views of Parliament were concerned, not that Members of Parliament had formed no view on whether they were appropriate. In this connection, we note that political parties were subject to extensive lobbying on the provisions of the Bill, and that resulted in late changes to the provisions on television access services. Accordingly, we remain of the view, explained in paragraph A5.6 of the consultation document, that Ofcom's task is to give effect to the legislation in a manner which is proportionate.
- 4.18 Ofcom is therefore satisfied that an appropriate policy objective is to identify and secure alternatives for any channels it excludes from the current requirements that would better meet the needs of sign language users.

Avoiding disproportionate burdens on broadcasters

- 4.19 Broadcasters all agreed that they should not be made subject to disproportionate burdens, though (as discussed below) not all agreed that Ofcom's proposals would secure that objective. Deaf groups generally did not dissent. Ofcom is satisfied that an appropriate policy objective is that any alternatives to the current arrangements should not impose disproportionate burdens on broadcasters (and that its proposals will not have this effect – see paragraphs 4.42 to 4.46 and the Impact Assessment at Annex 4).

Protecting analogue-only viewers

- 4.20 There was little disagreement with the proposition that any changes to the arrangements should not disadvantage analogue-only sign language users. Ofcom remains of the view that it would not be appropriate, having regard to the criteria in section 303(8) to exclude terrestrial channels from the statutory arrangements, given the large number of viewers to these channels. It also considers that it would be inappropriate to allow terrestrial channels to opt for arrangements that could result in signing disappearing altogether from the television screens of sign language users relying on analogue television.

¹⁶ Column 331 of Hansard for the House of Lords. Debate on the Communications Bill, 15 May 2003. <http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030515/text/30515-04.htm>

- 4.21 Accordingly, Ofcom considers that devising arrangements that do not disadvantage analogue-only viewers is an appropriate objective.

Avoiding significant reductions in subtitling

- 4.22 Those who commented agreed that any new arrangements should not result in a significant reduction in the amount of subtitling. Indeed, some deaf groups argued that there should be no possibility of any reduction in the amount of subtitling, given the larger number of people who used subtitling.
- 4.23 The Code allows subtitling targets to be adjusted downwards if expenditure on access services would otherwise mean that the broadcaster would breach the 1% expenditure limit, but provides that audio description and signing targets would remain unchanged. The reason for this is that subtitle users already have access to a great deal more programming with subtitles than is the case for those who rely upon audio description or signing. Moreover, given that expenditure on subtitling accounts for the majority of access service costs, reductions in the audio description and signing targets would not make a significant difference to the number of channels providing access services. Ofcom notes that many broadcasters, including those entitled under the Code to reduce the amount of subtitling they provide, consistently exceed the amount of subtitling that they are required to provide¹⁷. Ofcom intends to review any new arrangements in the light of experience, and will look at the impact on subtitling levels as part of this review.
- 4.24 Accordingly, Ofcom remains of the view that this policy objective, as formulated, is appropriate. We explain in paragraphs 4.50 to 4.52 below how we have taken this into account.

Alternatives to the current statutory obligations

- 4.25 Ofcom considered a number of possible alternatives to the current statutory obligations, some suggested by broadcasters, and invited views on all of them, including those which it did not consider appropriate.

Ending signing arrangements on low audience channels

- 4.26 As indicated above, a number of broadcasters suggested dropping all obligations in relation to signing on low audience channels, without substituting any alternatives. For the reasons discussed in paragraphs 4.16 to 4.18 above and in paragraph 4.26 below, Ofcom does not consider this to be an appropriate option, although as indicated in its policy objectives, we agree that any arrangements imposed as an alternative to the current statutory obligations should not impose a disproportionate burden on broadcasters.

Excluding public service channels

- 4.27 One deaf group suggested that the public service channels should be excluded from the current statutory obligations, and one broadcaster said that Ofcom had not justified why the BBC's digital-only channels in particular should be treated differently from channels such as Five US. In paragraph 3.18(b) of the consultation paper, Ofcom said that it was not satisfied (having regard to the criteria in section 303(8) of the Act) that any of the public service channels would qualify as a special case (i.e. to

¹⁷ See, for example, the report on the provision of television access services for 2006 at http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tvaccessrep/q406/.

be excluded from the obligations under section 303(5)). For the reasons set out in paragraph 4.27 above, Ofcom remains of that view.

Voluntary arrangements to increase sign-presentation

4.28 Ofcom noted in the consultation paper that one option it had considered was encouraging low audience channels voluntarily to allocate the resources they currently devote to sign-interpreted programmes to make sign-presented programmes. However, given the views expressed to Ofcom in earlier discussions with broadcasters (see paragraph 1.11 above), and reiterated by some in response to the consultation paper, Ofcom considers it is clear that allowing broadcasters of low audience channels a free choice would result in many of them opting to continue the status quo. Accordingly, Ofcom does not consider that this would help to achieve the policy objectives of excluding low audience channels from the current arrangements and increasing the amount of sign-presented programming.

Maintaining the status quo

4.29 Ofcom accepts that the status quo would be cheaper for many broadcasters than providing sign-presented programmes (though not necessarily cheaper than contributing to alternatives). It would also enable them to continue scheduling programmes at times that (while inconvenient to sign language users) minimise the impact on mainstream audiences and on their own advertising revenues. However, even taking these factors into account, for the reasons described in paragraph 4.29 above, Ofcom does not consider these arguments in favour of maintaining the status quo outweigh the conclusions that the current arrangements on low audience channels deliver little benefit to the intended audience.

Substituting signing with extra subtitling

4.30 Several broadcasters favoured the idea of providing more subtitling as a substitute for signing, pointing out that Ofcom's research found that many sign language users preferred subtitling when watching television. However, it is not obvious that this approach would provide significant additional benefits to hearing-impaired people. Many channels already exceed their subtitling obligations (see footnote 17) and would be able to meet new obligations without doing more subtitling than they do at present.

4.31 More significantly, Ofcom notes that this would not help those sign language users who, even those with some facility in English, do not in practice have the level of literacy needed to follow subtitles easily. In this connection, we note research quoted by the DST, which found that deaf people were significantly less likely to retain information in subtitling than those who were hard of hearing¹⁸. We also note that the British Deaf Association's view, that dropping signing obligations altogether would be a great disservice to sign language users. Accordingly, Ofcom does not consider that this would be an appropriate option.

Ofcom's proposals

4.32 The consultation paper proposed a different approach from those described above. In relation to channels excluded from the current statutory obligations, Ofcom would impose requirements under section 310(c) of the Act to provide a small amount of

¹⁸ *Sign on television – analysis of data*, Deaf Studies Trust (http://www.ofcom.org.uk/consult/condocs/signing/responses/deafstudies_annex.pdf).

sign-presented programming each month between the hours of 7am and 11pm, rising over time from 30 minutes to one hour, unless acceptable alternative arrangements were in place. Most deaf groups supported this approach (whilst hoping that broadcasters would provide support to a sign zone on the Community Channel rather than be required by Ofcom to schedule sign-presented programming themselves). However, many broadcasters were opposed to this option as explained and discussed further below.

Basis for excluding low audience channels and imposing sign-presentation

- 4.33 Deaf groups agreed that the policy objectives were generally appropriate, but some broadcasters felt that there was insufficient evidence that sign language users would prefer sign-presented programmes to sign-interpreted programmes. Like Five, ITV cautioned against relying too heavily on the views of ‘a handful of special interest lobby groups’, and questioned the basis for Ofcom’s claim that sign language users preferred sign-presented programming.
- 4.34 Although Ofcom’s conclusions on what sign language users would like to see instead do draw on available research, they are based mainly on the consistent advice of groups representing their interests. Contrary to the suggestion that this evidence is representative only of some parts of the deaf audience, or that it relies too heavily on the views of ‘a handful of special interest lobby groups’, it does in fact reflect the views of a very broad cross-section of groups representing the interests of hearing-impaired people. They include the groups represented on the Sign / Community Channel Working Group (the BDA, Deaf Broadcasting Council, National Deaf Children’s Society and the Royal Association of Deaf People), those commenting on its report (the RNID, the UK Council on Deafness, Sense, the Scottish Council on Deafness, the Wales Council for Deaf People, the Deaf Association of Northern Ireland, Becoming Visible, the Centre for Deaf Studies (Bristol University) and the Deafness, Cognition and Language Research Centre), and those individuals responding separately to this consultation. These bodies represent a broad spectrum of people with hearing impairments, ranging from the pre-lingually deaf to those who have become deaf or hearing-impaired later in life. Moreover, these views are not new. There has been pressure from deaf groups for more sign-presented programming in the form of a Sign Language Channel for many years.
- 4.35 While the research commissioned by Ofcom was not primarily intended to address the issue of whether sign language users preferred sign-presented or sign-interpreted programmes, it did shed light on the preferences of hearing-impaired viewers for signing on television. The small sample sizes means that the findings are only indicative, but they show that hearing-impaired users found sign-presentation significantly more helpful in improving their understanding of programmes¹⁹, and broadly preferred it to sign-interpretation. Similar indications arose from research and surveys carried out:
- a) for Channel 4 by the University of Bristol’s Centre for Deaf Studies²⁰ which found that ‘those programmes for deaf viewers are most often recalled spontaneously and most often viewed’ and that ‘deaf presenters on deaf programmes are the most highly rated’;

¹⁹ Of 47 hearing-impaired respondents who had some knowledge of signing, 32 said that sign-presentation improved their understanding of television a great deal or a fair amount, as compared with 20 who felt the same about sign-interpretation. Given the small sample sizes, these findings from the Ipsos-MORI research for Ofcom were not published, but are still indicative.

²⁰ *Sign Language on Television: final report to Channel 4*, B. Woll, 1991

- b) by the Deaf Studies Trust, which found that 74% of deaf respondents would want a separate Deaf TV channel, and 78% would watch it everyday if one existed²¹; and
 - c) for the National Deaf Children's Society and BBC Broadcast Ltd, which indicated that 'twice as many families who watch television with sign language have indicated to us that they prefer programmes with presenters or characters who use sign language to those who prefer on-screen interpreters²².
- 4.36 While this research is indicative rather than conclusive, Ofcom is satisfied that, taken together with the responses of deaf groups to Ofcom's consultation and to the Sign Language Working Group's report, it is clear that sign language users would like to see more sign-presented programmes in place of sign-interpreted programmes on low audience channels.
- 4.37 Contrary to the views of some broadcasters, who argue that few sign language users would bother to view sign-presented programmes on their channels, Ofcom considers that the preference for sign-presented programming coupled with a requirement for more convenient scheduling will increase the propensity of sign language users to seek out these programmes. In this connection, Ofcom notes that 'See Hear', currently the only sign-presented programme on UK television, attracts audiences averaging 160,000 viewers²³. However, Ofcom does agree that, without appropriate publicity, sign-presented programmes will be even more difficult to find than the larger number of sign-interpreted programmes currently broadcast. Accordingly, Ofcom will expect broadcasters to publicise the availability of signed programmes, as required by the Code on Television Access Services.
- 4.38 Consequently, Ofcom does not agree that there is insufficient evidence that sign language users preferred sign-presented programmes to sign-interpreted programmes, or that if sign-presented programming was provided, few sign language users would bother to view it.

Potential impact on provision of access services generally

- 4.39 In the light of the policy objective of not significantly reducing the amount of subtitling, and having regard to the interests of users of other access services (audio description and signing), Ofcom has considered the wider repercussions of changes to the signing arrangements and how these might be minimised.
- 4.40 The introduction of new signing arrangements will coincide with a significant increase in the amount of subtitling required on channels subject to the Code, together with smaller increases in the amount of signing and audio description. The cumulative effect of this will be to increase significantly the costs of providing access services. As on the last occasion when there was a significant increase in subtitling obligations, Ofcom will be looking at whether access service costs have changed, so that this can be taken into account in the annual review of which channels will be required to provide access services with effect from 1 January 2009. The other key factors in determining how many channels will provide access services in 2009 are

²¹ *Sign on Television: Analysis of Data*, Deaf Studies Trust, July 2007

²² *In their own words – young deaf people's access to television*, NDCS, November 2005 (http://www.ndcs.org.uk/search_clicks.rm?id=2009&destinationtype=2&instanceid=23810).

²³ *See Hear* is a magazine-type programme which is shown first at 1pm on Tuesdays on BBC2, and is repeated at 1.15am on Wednesday on BBC1. The estimated audience figures were provided by the BBC.

data for the whole of 2007 on the audience share and relevant turnover of different channels. This data will not be available for some months. Nevertheless, it is possible that, given the increase in subtitling costs, the number of channels that can afford to provide access services within the cap of 1% of relevant turnover could fall, even if the signing arrangements were to continue unchanged. We do not consider that it is necessary to make changes to the signing targets applying to public service channels or those with an audience share above 1%, as even though costs will rise over time, it is unlikely that they could not be met from within the 1% expenditure cap.

- 4.41 Having regard to the fact that many sign language users also make use of subtitling, and Ofcom's policy objective that any new arrangements for signing should not result in a significant reduction in the amount of subtitling, we have considered the possible impact of raising the amount of sign-presentation from 30 minutes to 45 minutes at the fifth anniversary of the relevant date, which for many channels would be at the beginning of 2009. It appears possible that the extra cost would have the perverse effect of reducing the number of channels providing subtitling and signing. Accordingly, we believe that it would be appropriate to maintain the level of sign-presentation at 30 minutes per month until the review that will be carried out prior to digital switchover, and this is reflected in Ofcom's decision in section 5.

Avoiding disproportionate burdens on broadcasters

- 4.42 Several broadcasters said that even a small quantity of sign-presented programmes would cost more than sign-interpretation, and more than Ofcom had suggested in its impact assessment, and that the costs they had to bear would be disproportionate. Ofcom agrees that sign-presented programmes would cost more than sign-interpretation, and that production costs could vary significantly, depending on decisions by broadcasters on genre, on production values, and on whether programmes should be studio-based or not. While Ofcom would not discourage broadcasters from making more expensive types of programmes, we anticipate that they will seek to minimise their expenditure, on the grounds that the programmes would not attract much advertising revenue. There are a variety of ways in which broadcasters might do this, including (as one broadcaster suggested) magazine-style formats or narrative programmes. For the reasons discussed in more detail in paragraphs A4.31 to A4.32 of the Impact Assessment at Annex 4, Ofcom considers that costs of £30,000 per half-hour represent a reasonable central estimate within a range of possible costs.
- 4.43 Ofcom accepts that it should avoid imposing disproportionate burdens on broadcasters. For the reasons explained in paragraph A4.10 of the Impact Assessment, we consider that Ofcom's task, within the overall statutory framework, is to exercise its discretion as to the imposition of future arrangements for excluded channels, in a manner that is proportionate. In doing so, we must have regard in particular to the costs of the provision and the benefit, or likely benefit of the assistance. In Ofcom's view, this does not necessarily mean that any new arrangements should cost the same as or less than the existing arrangements. The overall cost of providing access services should not impose a disproportionate burden on broadcasters compared to the benefits conferred.
- 4.44 In this connection, Ofcom has said it will take account of the assessed cost of any new signing arrangements in determining whether spending on access services by broadcasters is under the limit of 1% of their relevant turnover²⁴. Ofcom has previously concluded, following consultation, that this limit would be appropriate to

²⁴ Paragraph A5.27 of 2007 Signing Proposals.

ensure that broadcasters do not face disproportionate costs in providing access services. Ofcom confirmed this position following the Access Services Review²⁵. Accordingly, Ofcom considers that, by taking account of the assessed cost of expenditure on signing within the 1% limit, it will ensure that the costs placed upon broadcasters are not disproportionate.

- 4.45 Responding to Ofcom's suggestion that an annual contribution of around £20,000 might be appropriate, one broadcaster said that it was reasonable and proportionate; another said that while it might not be excessive, it might represent more than channels were currently spending on sign-interpretation. Some broadcasters argued that the likely difference in costs between providing sign-presented content on their own channels and participating in alternative arrangements (such as the Community Channel) amounted to an attempt by Ofcom to coerce broadcasters to participate in this scheme.
- 4.46 Ofcom rejects this argument. Ofcom's policy objective, having regard to its statutory duties, is to increase the amount of sign-presented programming available to sign language users. However, Ofcom recognises that such an objective may be achieved in different ways and is therefore prepared to introduce a more flexible approach. Far from coercing broadcasters to adopt one particular manner of achieving this, this may be achieved on licensees' own channels, or by other means which in Ofcom's view, provide an acceptable alternative to the requirements Ofcom proposes to impose on excluded channels under section 303(10). Ofcom proposed in paragraph 3.32 of its 2007 Signing Proposals what it considers to be the minimum credible amount of sign-presented programming (30 minutes a month, as compared with an equivalent obligation to provide over 7 hours of sign-interpreted programming a month for broadcasters subject to a 2% signing target). It is this amount that determines the estimated cost of £60,000 per annum for meeting the regulatory requirements for excluded channels which were proposed in the consultation document. A collective approach to delivering more sign-presented programming (for example through a sign zone on the Community Channel or similar scheme) would secure greater economies of scale as well as providing the advantage for sign language users of a single destination. For these reasons, Ofcom considers that it would be appropriate for channels contributing to such an arrangement to contribute a figure at the low end of the range of costs between the estimated annual costs of £18,800 to comply with a 2% signing target using sign-interpreted programming, and the estimated cost of £60,000 per annum for meeting the regulatory requirements proposed in the consultation document.

Scheduling of sign-presented programmes

- 4.47 Several broadcasters argued that the requirement to schedule programmes between 7am and 11pm would represent an unwarranted intrusion in broadcasters' editorial discretion. Ofcom accepts that sign-presented programmes are unlikely to appeal to a general audience. However, we do not consider that requiring excluded channels to broadcast a small amount of sign-presented programming each month between 7am and 11pm would be unreasonable or represent an unacceptable intrusion into editorial matters. In reaching this conclusion, we have had regard to Ofcom's general duties (see paragraphs 2.2 and 2.3 above) and the reasonable wish of sign language users to be able to watch television programmes at times other than very late at night or early in the morning. Since this is how broadcasters currently schedule signed programmes, and there is no evidence to suggest that they would not continue to schedule them at unsociable hours, this would suggest that scheduling requirements

²⁵ Paragraphs 2.54 to 2.56, 2006 Review Statement.

are necessary. (Ofcom notes this is not such an issue for programmes which use subtitles or audio description as those who benefit from watching such television are able in those cases, to benefit from a much larger selection of programming shown at various times across the day, including peak times). Moreover, given the scheduling requirements Ofcom has decided to impose allow a 16 hour window within which broadcasters schedule this programming, this will allow most broadcasters significant scope to schedule it in ways that minimise the risk of lost advertising revenue. Accordingly, for all these reasons, Ofcom considers this requirement to be both justified and proportionate.

Statutory powers

- 4.48 A few broadcasters suggested that Ofcom may not have powers to impose different arrangements to those set out in section 303(5) of the Act. In this connection, Ofcom notes that the Communications Act provides specific powers in section 303 to set out in the Code descriptions of programmes– which may include all the programmes included in a service - that it considers should be excluded from the statutory requirements in section 303(5) for subtitling, signing or audio description, having regard to the criteria set out in section 303 (8) of the Act. Having excluded programmes or services from the arrangements in section 303(5), section 303(10) allows Ofcom to impose alternative requirements with respect to the provision of assistance for the disabled. The Act leaves it up to Ofcom to determine what, if any, alternative requirements it deems to be appropriate in the circumstances. Accordingly, Ofcom does not agree that it has no powers to impose different arrangements, provided that these are justifiable.

Timing of new arrangements

- 4.49 A number of respondents, including some broadcasters, deaf groups and access service providers, suggested that there would be practical difficulties in implementing changes to the current signing arrangements from the beginning of 2008. Ofcom agrees, and now intends that the new arrangements should come into effect from 1 January 2009, in order to allow sufficient time for broadcasters to arrange for the production or acquisition of sign-presented programming, or to propose and make alternative arrangements in line. The guidance at Annex 3, which will form an appendix to the Code on Television Access Services, sets out an indicative timetable.

Potential impact on provision of access services generally

- 4.50 In the light of the policy objective of not significantly reducing the amount of subtitling, and having regard to the interests of users of other access services (audio description and signing), Ofcom has considered the wider repercussions of changes to the signing arrangements and how these might be minimised.
- 4.51 The introduction of new signing arrangements will coincide with a significant increase in the amount of subtitling required on channels subject to the Code, together with smaller increases in the amount of signing and audio description. The cumulative effect of this will be to increase significantly the costs of providing access services. As on the last occasion when there was a significant increase in subtitling obligations, Ofcom will be looking at whether access service costs have changed, so that this can be taken into account in the annual review of which channels will be required to provide access services with effect from 1 January 2009. The other key factors in determining how many channels will provide access services in 2009 are data for the whole of 2007 on the audience share and relevant turnover of different

channels. This data will not be available for some months. Nevertheless, it is possible that, given the increase in subtitling costs, the number of channels that can afford to provide access services within the cap of 1% of relevant turnover could fall, even if the signing arrangements were to continue unchanged. We do not consider that it is necessary to make changes to the signing targets applying to public service channels or those with an audience share above 1%, as even though costs will rise over time, it is unlikely that they could not be met from within the 1% expenditure cap.

- 4.52 Having regard to the fact that many sign language users also make use of subtitling, and Ofcom's policy objective that any new arrangements for signing should not result in a significant reduction in the amount of subtitling, we have considered the possible impact of raising the amount of sign-presentation from 30 minutes to 45 minutes at the fifth anniversary of the relevant date, which for many channels would be at the beginning of 2009. It appears possible that the extra cost would have the perverse effect of reducing the number of channels providing subtitling and signing. Accordingly, we believe that it would be appropriate to maintain the level of sign-presentation at 30 minutes per month until the review that will be carried out prior to digital switchover, and this is reflected in Ofcom's decision in section 5.

Other issues

- 4.53 Ofcom has also considered suggestions made by some respondents that the needs of sign language users could be met in different ways (e.g. via websites), either now or in the future. While agreeing that there may be scope for alternatives to conventional broadcasting in future, Ofcom notes that current legislation is clearly directed to ensuring that television channels make appropriate provision for persons who are deaf or hard of hearing.

Community Channel sign zone

- 4.54 Several respondents commented on the proposal for a Trust to administer any funds subscribed for a sign zone on the Community Channel, which Ofcom has indicated on the basis of current information about such a scheme, it would be minded to accept as an acceptable alternative to imposing regulatory arrangements on excluded channels under section 303(10).

Role of deaf people

- 4.55 Deaf groups and individuals emphasised the importance of a strong role for deaf people in operating a Trust that would pay for signed programmes on the Community Channel. One deaf group said that the opportunity should be used to create employment for deaf people. As regards the Community Channel concept, it said that in editorial, production and technical areas, the teams should involve the maximum possible representation of deaf sign language users, and the minimum possible number of hearing people.
- 4.56 While Ofcom understands the desire of deaf groups to ensure that deaf people have a strong or controlling role over any voluntary arrangements entered into by broadcasters as an alternative to requirements that would otherwise be imposed for the provision of sign-presented programming by excluded channels, it is not within Ofcom's remit to make this a requirement. However, in considering whether alternative requirements should be imposed in relation to individual broadcasters, Ofcom will expect any alternative arrangements entered into on a voluntary basis to comply with the requirement set out in the Code on Television Access Services that '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 deafblind²⁶. It will also expect broadcasters to comply with the guidance set out in Annex 3 to the Code (reproduced as Annex 3 to this Statement).

- 4.57 Broadcasters of many channels in principle supported the idea of a sign zone on the Community Channel as an alternative to imposing alternative requirements on excluded channels. A multi-channel broadcaster described it as the most credible and widely-supported solution to the problems identified by Ofcom, while a public service channel said that the proposal had the advantages of being cost-effective, targeted, impactful and proportionate. One multi-channel broadcaster said that it was interested in providing sign-presented programming to the Community Channel; another said that producing sign-presented programming was only feasible if broadcasters could enter into a voluntary arrangement to share costs, and that it would choose to do so.
- 4.58 However, although one broadcaster recognised that Ofcom was not empowered to mandate participation in such a scheme, most wanted Ofcom to take a lead in developing it further. Multi-channel broadcasters asked for concrete information about how it would work in practice, the exact cost implications and the level of control and representation that SCBG members would have. A number of broadcasters sought clarification on issues such as the criteria for acceptable alternative arrangements, the governance arrangements for any Trust set up to fund signed programmes on the Community Channel, how it would monitor compliance with the Trust's instructions, and whether the success or otherwise of the Trust would be reviewed periodically.
- 4.59 While Ofcom welcomes the high level of interest in the idea proposed by Sky and the Community Channel for a sign zone, it emphasises that this is by no means to the exclusion of any other such schemes. It is open to broadcasters to put forward for consideration to Ofcom any other voluntary arrangements they wish to enter into in lieu of having requirements imposed upon them. As Ofcom explained in the consultation document, it is for broadcasters themselves to propose these. Ofcom facilitated a briefing for broadcasters by the Community Channel and the Working Group in July, and several broadcasters accepted an invitation from the Community Channel for further discussions about governance and other issues. Ofcom is willing to facilitate further such discussions if necessary, and to respond to other proposals for alternative arrangements. But the choice over what proposals may be developed as alternatives to the regulatory requirements Ofcom would impose under section 303 (10) and whether to adopt them rests with the broadcasters to decide, not Ofcom.

Broadcasters' contributions to alternative arrangements

- 4.60 Information TV said that Ofcom's apparent support for the Community Channel appeared to be a direct intervention in a manner which could distort competition in the market, tantamount to a levy on some channels to be handed to another channel, selected without consultation or tender. Another respondent said that the Community Channel should not be the only third party option.
- 4.61 Ofcom does not agree with Information TV's assertion that the discussion of the Community Channel proposal in Ofcom's consultation paper represents a direct

²⁶ Paragraph 35, Code on Television Access Services (as amended) (<http://www.ofcom.org.uk/tv/ifi/codes/ctas/>).

intervention in a manner which could distort competition in the market, tantamount to a levy on some channels to be handed to another channel, selected without consultation or tender. Ofcom notes that the proposal emanated from industry, and that it was sensible for the consultation paper to refer to it, as it is the only firm proposal made to date that has attracted widespread interest from broadcasters and deaf groups as an alternative way of delivering more sign-presented programming. Ofcom made clear in the consultation paper that it will consider any proposals for alternative arrangements when deciding whether or not to impose the new regulatory requirements. It is possible for more than one set of alternative arrangements to be approved, and it is for individual broadcasters to decide whether they wish to participate in alternative arrangements, and if so, which. Ofcom is aware of other ideas mooted by broadcasters, and will consider specific proposals.

Section 5

Ofcom's decisions

- 5.1 Having regard to the criteria set out in section 303(8) of the Act, Ofcom has decided, for the reasons set out in paragraphs 4.6 to 4.13 above to amend the Code on Television Access Services ('the Code') to exclude channels with an audience share of between 0.05% and 1% other than public service channels from the provisions of the Code intended to give effect to section 303(5)(d) of the Act.
- 5.2 For the reasons set out in paragraph 4.14, the amendments to the Code will allow Ofcom to decide, in the light of the criteria set out in section 303(8) of the Act, whether or not channels with an audience share of slightly more than or slightly less than 1% should be excluded.
- 5.3 Ofcom has decided, for the reasons set out in paragraphs 4.33 to 4.38 above to amend the Code to impose requirements in relation to channels that have been excluded from meeting the obligations under section 303(5)(d) of the Act. The requirements which will be imposed are to transmit sign-presented programming each month between 7am and 11pm. The minimum duration of such programming should be 30 minutes on each channel from the first anniversary of its relevant date²⁷.
- 5.4 The amendments to the Code will also allow Ofcom to decide, in relation to channels that have been excluded from meeting the obligations under section 303(5)(d) of the Act, not to impose the requirements referred to in paragraph 5.3 above if Ofcom is satisfied that, in any particular case, that alternative arrangements proposed by broadcasters would be likely to provide better assistance for deaf people using sign language, such that the requirements in paragraph 5.3 need not be imposed. Ofcom has set out guidance for broadcasters on the matters it would take account in determining whether alternative arrangements are acceptable (see Annex 3). This guidance will form an appendix to the Code. Broadcasters are not obliged to propose alternative arrangements, and Ofcom is not required to accept alternative arrangements which, in its view, do not fulfil the criteria set out in the guidance.
- 5.5 In order to allow time for excluded channels sufficient time to prepare, the Code will require that the new requirements or acceptable alternative arrangements be implemented with effect from 1 January 2009.
- 5.6 Ofcom has amended the Code on Television Access Services as shown in Annex 2, and has published guidance to broadcasters (Annex 3) as an annex to the Code.
- 5.7 Ofcom will carry out a review in the light of experience of the new arrangements, with the aim of enabling any changes that may be appropriate to be implemented at or before digital switchover.

²⁷ This is the 'relevant date' defined in section 305 of the Communications Act 2003. In the case of many low audience channels, this is the date when this part of the legislation came into effect, i.e. 29 December 2003.

Annex 1

Consultation comments and Ofcom's response

Introduction

- A1.1 In May 2007, Ofcom published a consultation document seeking views from interested parties on proposed changes to arrangements for signing on television. This Annex summarises comments made by consultees and Ofcom's response. This summary of consultees' comments should be read in conjunction with Ofcom's assessment of specific issues raised by the respondents as set out in Section 4 of the statement.
- A1.2 In this document, the term 'sign-language users' refers to those hearing-impaired people who have sufficient knowledge of sign-language to understand television programmes, whether sign-interpreted or sign-presented. 'Deaf groups' refers to organisations representing the interests of hearing-impaired people. The term 'multi-channel broadcaster' refers to multi-channel broadcasters without public service obligations that have elected to submit confidential responses.

Respondents

- A1.3 There were several responses from individuals, some of them sign language users. Groups representing the interests of Deaf people ('deaf groups') included Becoming Visible (BV), the British Deaf Association (BDA), the Royal National Institute for the Deaf (RNID), and TAG. In addition, there was a response from the University of Bristol's Deaf Studies Trust (DST). Several broadcasters also commented, including the BBC, BSkyB, Channel 4 (C4), Discovery, Five, Information TV, ITV, Nickelodeon, Playboy TV, S4C, Sparrowhawk and three other multi-channel broadcasters), as well as the Satellite Cable Broadcasting Group (representing a variety of multi-channel and single channel broadcasters). In addition, there were responses from the UK Film Council, and companies providing access services, including ITFC (which mainly provides subtitling and audio description), Red Bee Media (which supplies all three access services), and ITV's subsidiary ITV SignPost (which mainly supplies sign-interpretation).
- A1.4 All these submissions have been posted on our website. A few respondents requested anonymity or provided confidential versions of their submissions. We have taken all the responses into account in formulating our conclusions. Key points from the non-confidential submissions, as well as Ofcom's conclusions, are summarised below. Ofcom has also had regard to responses to the Sign / Community Channel Working Group Proposal to Ofcom (published as Annex 6 to Ofcom's consultation), which attracted comments from the RNID, the UK Council on Deafness (UKCOD), Sense, the Scottish Council on Deafness, the Wales Council for Deaf People, the Deaf Association of Northern Ireland, Becoming Visible, the Centre for Deaf Studies (Bristol University) and the Deafness, Cognition and Language Research Centre (DCAL, University College London).

Policy objectives

A1.5 On the basis of the above evidence, its general duties, and the relevant statutory criteria (section 303 (8) of the Act), in particular:

- a) the extent of the benefit conferred by the provision of the current statutory obligations in relation to those services;
- b) the size of the intended audience for those programmes/services;
- c) the number of persons likely to benefit from the assistance and the extent of the likely benefit in each case; and
- d) the cost, in the context of these matters, of providing the assistance,

Ofcom considered there was a case for excluding additional low audience channels from those statutory requirements; and that if they were excluded, there was a case for imposing alternative requirements in relation to those low audience services.

A1.6 In the light of the evidence summarised in the consultation paper and having regard to its statutory duties, Ofcom proposed that its policy objective should be:

- a) to exclude low audience channels from the existing obligations under the Act on the basis of the statutory criteria; and
- b) to identify and secure alternatives that would:
 - i) better meet the needs of sign language users;
 - ii) not impose disproportionate burdens on broadcasters;
 - iii) not disadvantage analogue-only sign language users;
 - iv) not result in a significant reduction in the amount of subtitling

and, in the light of the clear preference of sign language users for sign-presented programmes, to increase the amount of sign-presented programming on television, even if this results in a reduction in the amount of sign-interpreted programming.

A1.7 We invited the views of consultees on whether these policy objectives were appropriate. Key comments, and Ofcom's response, are summarised below.

Exclusion of low audience channels

A1.8 Some broadcasters (S4C, Sparrowhawk and a multi-channel broadcaster) agreed that the policy objectives were sensible. However, while there was broad agreement amongst other broadcasters that it was sensible to consider alternatives to the present arrangements (BSkyB, C4, Five, ITV, S4C, SCBG, and a multi-channel broadcaster), they were mainly interested in arrangements that would reduce (or not increase) the burden on low-audience channels. Arguing that very few people watched sign-interpreted programmes on low audience channels, some broadcasters (Five, SCBG) agreed that the amount of sign-interpreted programming on those channels should be reduced (e.g. by raising the audience threshold for provision of signing), but favoured voluntary rather than mandatory alternatives. Five said that it was supportive of a sign zone on the Community Channel and

- would be willing to help establish and finance it, in lieu of signing on its non-PSB channels.
- A1.9 A number of broadcasters (C4, Five and ITV) did not feel that the case for change had been made – ITV and its subsidiary ITV SignPost said that the evidence was contradictory in places and representative only of some parts of the deaf audience. ITV SignPost argued that the protection of choice and diversity in sign-accessible genres on all platforms should be a stated policy objective.
- A1.10 ITV's subsidiary (ITV SignPost) made similar comments, arguing that Ofcom had relied upon research that was incomplete and contradictory, including unreliable indications of the size of the audience for sign-interpreted programmes, and lack of data on current levels of satisfaction with the availability and quality of signing. It said that Ofcom should not set policy objectives without carrying out further research on the size of the intended audience, and what their preferences were. It should also ensure that it had consulted a statistically significant cohort of the deaf community. It noted in particular that the views of young people had not been canvassed, and said that sign-interpretation should continue on children's channels.
- A1.11 Contrary to the suggestions by ITV and ITV SignPost, the main reason why Ofcom has concluded that sign-interpretation on low audience channels delivers little benefit is that, given the relatively small number of people who could potentially use sign language (on which the research does produce statistically significant data within the range reported by Ofcom), and the fact that many hearing-impaired people do not have access to low audience channels²⁸, it is clear that very few sign language users can be watching sign-interpreted programmes on low audience channels. Consequently, Ofcom does not agree that it is necessary to carry out further research on the size of the intended audience.
- A1.12 Playboy TV strongly believed that adult television channels should be exempted from any signing requirements on the grounds that signing would detract from the enjoyment of the programming by the hard of hearing, and that of the intended (signing) audience would be very small indeed, so that the cost would be disproportionate to the benefit. Ofcom notes that adult channels such as Playboy TV do not attain the audience share that would require them to provide signing.
- A1.13 Some broadcasters questioned whether Ofcom had correctly interpreted its powers under the Communications Act. Some (ITV, Five and a multi-channel broadcaster) said that the legislation allowed broadcasters to choose between sign-interpretation and sign-presentation, and suggested that Ofcom did not have the power to require sign-presentation.
- A1.14 Ofcom does not agree that it has misinterpreted its powers under the Act. The Act provides specific powers in section 303 to set out in the Code descriptions of programmes– which may include all the programmes included in a service - that it considers should be excluded from the statutory requirements in section 303(5) for subtitling, signing or audio description, having regard to the factors set out in section 303 (8) of the Act. Having excluded programmes or services from the arrangements in section 303(5), section 303(10) allows Ofcom to impose alternative requirements with respect to the provision of assistance for the disabled. The Act leaves it up to Ofcom to determine what, if any, alternative requirements it deems to

²⁸ The 2006 Code Review reported that 44% of hearing-impaired people only had access to the five terrestrial channels.

be appropriate in the circumstances. Accordingly, Ofcom does not agree that it has no powers to impose different arrangements, provided that these are justifiable.

- A1.15 Another access service provider (Red Bee) suggested that, given dissatisfaction with sign-interpretation, the objective should be to address some of the problems identified in research, including the selection and scheduling of signed programmes and the size of the signer before radically reducing the amount of such programming.
- A1.16 Ofcom does not consider that the impact on sign language users of its proposals would be as radical as is suggested; the effect would be that sign-interpreted programmes would continue to be broadcast as at present on channels accounting for almost 80% of viewing by UK households.
- A1.17 Even if, as Red Bee suggested, further work was done on why few people watch sign-interpreted programmes, this would not address the demographic factors that inevitably result in a very small number of sign language users watching sign-interpreted programming on low audience channels.
- A1.18 Moreover, Ofcom does not consider that the ideas suggested by the access service provider are likely to be effective in improving the attraction of sign-interpreted programmes. The consultation on the access services review revealed no consensus in support of an increase in the size of the signer, given that this would inevitably obscure more of the picture. As regards scheduling, section 303(5) would not allow the Code to oblige broadcasters to schedule sign-interpreted programmes at more convenient times. It is unlikely that broadcasters would agree to do so voluntarily, given that they are opposed to proposals that would require any excluded channels to schedule a much smaller amount of sign-presented programming between 7am and 11pm.
- A1.19 Ofcom therefore considers that, in terms of section 303(8) of the Communications Act, sign-interpretation is not an effective means for low audience channels to promote the understanding and enjoyment of television by sign-language users.

Better meeting the needs of sign language users

- A1.20 Deaf groups (BDA, RNID, TAG) and others (the DST and some individuals) agreed that the policy objectives were appropriate; a former chair of the BDA congratulated Ofcom for understanding the wishes of deaf people to have more sign-presented programming. BDA was delighted that the status quo was recognised as not being in the best interest of the sign language users, and supported the policy objectives. One access service provider (ITFC) agreed that sign language users would be better served by more sign-presented programming, but suggested that sign-interpretation on 'excluded channels' of programmes of particular interest to sign language users could be considered. While not responding directly, BV strongly welcomed the proposed move towards more sign-presented programming. Individual respondents agreed generally with the policy objectives, although one wanted greater specificity about the nature of sign-presented programming that would be produced.
- A1.21 A multi-channel broadcaster said that Ofcom had relied on two inappropriate contentions – that signing must be provided in some form, and that the size of the signing population should not be taken into account. It argued that Ofcom was entitled to exclude channels from any signing obligations.

- A1.22 Ofcom rejects this proposition. Section 303(5) of the Act makes clear that signing should be provided in some form. Ofcom has not suggested that the size of the signing population should not be taken into account; indeed, in concluding that too few people watched sign-interpreted programmes on low audience channels, it took account of the relatively small number of sign language users. Nonetheless, we remain of the view, set out in paragraph 3.18(a) of the consultation document, that Parliament enacted the requirements in section 303 of the Act in the full knowledge that the number of sign language users is small, and that Ofcom's task, explained in paragraph A5.6 of the consultation document, is to give effect to the legislation in a manner which is proportionate.
- A1.23 Some broadcasters (C4, ITV, Five) felt that there was insufficient evidence that sign language users would prefer sign-presented programmes to sign-interpreted programmes. Like Five, ITV cautioned against relying too heavily on the views of 'a handful of special interest lobby groups', and questioned the basis for Ofcom's claim that sign language users preferred sign-presented programming.
- A1.24 Although Ofcom's conclusions on what sign language users would like to see instead do draw on available research, they are based mainly on the consistent advice of groups representing their interests. Contrary to the suggestion that this evidence is representative only of some parts of the deaf audience, or that it relies too heavily on the views of 'a handful of special interest lobby groups', it does in fact reflect the views of a very broad cross-section of groups representing the interests of hearing-impaired people. They include the groups represented on the Sign / Community Channel Working Group (the BDA, Deaf Broadcasting Council, National Deaf Children's Society and the Royal Association of Deaf People), those commenting on its report (the RNID, the UK Council on Deafness, Sense, the Scottish Council on Deafness, the Wales Council for Deaf People, the Deaf Association of Northern Ireland, Becoming Visible, the Centre for Deaf Studies (Bristol University) and the Deafness, Cognition and Language Research Centre), and those individuals responding separately to this consultation. These bodies represent a broad spectrum of people with hearing impairments, ranging from the pre-lingually deaf to those who have become deaf or hearing-impaired later in life.
- A1.25 Moreover, while the research commissioned by Ofcom was not primarily intended to address the issue of whether sign language users preferred sign-presented or sign-interpreted programmes, it did shed light on the preferences of hearing-impaired viewers for signing on television. The small sample sizes means that the findings are only indicative, but they show that hearing-impaired users found sign-presentation significantly more helpful in improving their understanding of programmes²⁹, and broadly preferred it to sign-interpretation. Similar indications arose from research and surveys carried out:
- a) for Channel 4 by the University of Bristol's Centre for Deaf Studies³⁰ which found that 'those programmes for deaf viewers are most often recalled spontaneously and most often viewed' and that 'deaf presenters on deaf programmes are the most highly rated';

²⁹ Of 47 hearing-impaired respondents who had some knowledge of signing, 32 said that sign-presentation improved their understanding of television a great deal or a fair amount, as compared with 20 who felt the same about sign-interpretation. Given the small sample sizes, these findings from the Ipsos-MORI research for Ofcom were not published, but are still indicative.

³⁰ *Sign Language on Television: final report to Channel 4*, B. Woll, 1991

- b) by the Deaf Studies Trust, which found that 74% of deaf respondents would want a separate Deaf TV channel, and 78% would watch it everyday if one existed³¹; and
- c) for the National Deaf Children's Society and BBC Broadcast Ltd, which indicated that 'twice as many families who watch television with sign language have indicated to us that they prefer programmes with presenters or characters who use sign language to those who prefer on-screen interpreters³².

A1.26 While this research is indicative rather than conclusive, Ofcom is satisfied that, taken together with the responses of deaf groups to Ofcom's consultation and to the Sign Language Working Group's report, it is clear that sign language users would like to see more sign-presented programmes in place of sign-interpreted programmes on low audience channels. Consequently, Ofcom does not agree that there is insufficient evidence that sign language users preferred sign-presented programmes to sign-interpreted programmes.

Avoiding significant reductions in subtitling

A1.27 Like the RNID, TAG, and the UK Film Council, the BDA was keen that any new arrangements should not result in a reduction in the amount of subtitling, noting that this is a popular form of access to television for the majority of deaf people. Three respondents (ITFC, RNID and TAG) expressed concern at the suggestion that, if signing costs rose, the amount of subtitling on channels could be ratcheted down to Levels Two or Three; one (ITFC) noted that the assessment suggested that there would be little risk of significant impact on subtitling levels for two years, and asked what would happen thereafter.

A1.28 Ofcom notes that none of the respondents disagreed with the proposition that any new arrangements should not result in a significant reduction in the amount of subtitling. However, in the light of the concern expressed that additional expenditure on signing could affect subtitling levels, it may be helpful to explain how the arrangements for adjusting targets work. The Code allows subtitling targets to be adjusted downwards to Level Two (66% of the target) or Level Three (33% of the target) if expenditure on access services would otherwise mean that the broadcaster would breach the 1% expenditure limit, but provides that audio description and signing targets remain unchanged.

A1.29 Ofcom put in place these arrangements to enable more channels to provide more access services than would be the case if there was no mechanism to reduce subtitling targets. For example, if Ofcom limited access service obligations to those channels that could meet 100% of the assessed cost of the targets from within the 1% expenditure limit, the number of channels providing subtitling, signing and audio description would be significantly fewer. For example, the current arrangements mean that 19 extra channels are providing access services in 2007 than would otherwise be the case. The reason why Ofcom adjusts subtitling targets rather than those for other access services is that subtitle users already have access to a great deal more assistance than do users of signing and audio description. In any case, many broadcasters, including those entitled under the Code to reduce the amount

³¹ *Sign on Television: Analysis of Data*, Deaf Studies Trust, July 2007

³² *In their own words – young deaf people's access to television*, NDCS, November 2005 (http://www.ndcs.org.uk/search_clicks.rm?id=2009&destinationtype=2&instanceid=23810).

of subtitling they provide, consistently exceed the amount of subtitling that they are required to provide³³.

- A1.30 Accordingly, Ofcom remains of the view that this objective, as formulated, is appropriate. We explain in A1.72 to A1.74 how we have taken this objective into account.

Avoiding disproportionate burdens on broadcasters

- A1.31 Several broadcasters (Five, SCGB and one other multi-channel broadcaster) said that even a small quantity of sign-presented programmes would cost more than sign-interpretation, and more than Ofcom had suggested in its impact assessment, and that the costs they had to bear would be disproportionate. Ofcom agrees that sign-presented programmes would cost more than sign-interpretation, and made this clear in the impact assessment. It also agrees that production costs could vary significantly, depending on decisions by broadcasters on genre, on production values, and on whether programmes should be studio-based or not. While Ofcom would not discourage broadcasters from making more expensive types of programmes, we anticipate that they will seek to minimise their expenditure, on the grounds that the programmes would not attract much advertising revenue. There are a variety of ways in which broadcasters might do this, including (as one broadcaster suggested) magazine-style formats or narrative programmes. For the reasons discussed in more detail in paragraphs A4.30 to A4.31 of the Impact Assessment at Annex 4, Ofcom considers that costs of £30,000 per half-hour represent a reasonable central estimate within a range of possible costs.
- A1.32 Ofcom accepts that it should avoid imposing disproportionate burdens on broadcasters. For the reasons explained in paragraph A4.10 of the Impact Assessment, we consider that Ofcom's task is to consider how Parliament's intentions can be implemented in a proportionate manner. In this connection, Ofcom has said it will take account of the assessed cost of any new signing arrangements in determining whether spending on access services by broadcasters is under the limit of 1% of their relevant turnover³⁴. Ofcom has previously concluded, following consultation, that this limit would be appropriate to ensure that broadcasters do not face disproportionate costs in providing access services. Ofcom confirmed this position following the Access Services Review³⁵. Accordingly, Ofcom considers that, by taking account of the assessed cost of expenditure on signing within the 1% limit, it will ensure that the costs placed upon broadcasters are not disproportionate.
- A1.33 Some broadcasters (Five, ITV) argued that the likely difference in costs between providing sign-presented content on their own channels and participating in alternative arrangements (such as the Community Channel) amounted to an attempt by Ofcom to coerce broadcasters to participate in this scheme.
- A1.34 Ofcom rejects this argument. Ofcom's policy objective, having regard to its statutory duties, is to increase the amount of sign-presented programming available to sign language users, whether this is achieved on licensees' channels, or in other ways that provide an acceptable alternative to the requirements Ofcom proposes to impose on excluded channels under section 303(10). Ofcom has proposed what it considers to be the minimum credible amount of sign-presented programming (30

³³ See, for example, the report on the provision of television access services for 2006 at http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tvaccessrep/q406/.

³⁴ Paragraph A5.27 of 2007 Signing Proposals.

³⁵ Paragraphs 2.54 to 2.56, 2006 Review Statement.

minutes a month, as compared with an equivalent obligation to provide over 7 hours of sign-interpreted programming a month for broadcasters subject to a 2% signing target). It is this amount that is the sole determinant of the estimated cost of £60,000 per annum for meeting the regulatory requirements for excluded channels which were proposed in the consultation document. By contrast, Ofcom considers that, because a collective approach to delivering more sign-presented programming (for example through a sign zone on the Community Channel) would secure greater economies of scale as well as providing the advantage for sign language users of a single destination, more convenient scheduling and improved access to sign-presented programming for both DTT and subscription television viewers, it would be appropriate for channels contributing to such an arrangement to contribute a figure at the low end of the range of costs between the estimated annual costs of £18,800 to comply with a 2% signing target using sign-interpreted programming, and the estimated cost of £60,000 per annum for meeting the regulatory requirements proposed in the consultation document.

Options considered

- A1.35 Ofcom also said that, before identifying options for the consultation, it had considered and proposed to reject three further ideas (paragraph 3.18 of the consultation document), including dropping the requirement on broadcasters to provide signing (without putting any alternative arrangements in place); excluding some or all of the public service channels from the requirement to meet the current signing targets; and encouraging broadcasters to allocate the resources they currently allocate to sign-interpreted programmes to make sign-presented programmes. Ofcom asked whether consultees agreed with Ofcom's reasons for rejecting these ideas.
- A1.36 There was general agreement with Ofcom's reasoning from most deaf groups (BDA, DST, RNID, TAG), access service providers (ITFC, Red Bee), some broadcasters (S4C, Sparrowhawk and a multi-channel broadcaster), the UK Film Council and some individuals. Two other broadcasters (C4 and a multi-channel broadcaster) agreed that, given the need to provide appropriate access services, it would not be appropriate to drop the current requirements on broadcasters, without putting alternative arrangements in place. ITV Signpost agreed that the number of sign language users should not be a reason why signing should not be provided, and that analogue viewers should be protected. However, one broadcaster (Five) and one individual said that this idea should not have been discarded; Ofcom should specifically have considered raising the audience share threshold for signing, so that low audience channels were relieved of all signing obligations.
- A1.37 Ofcom understands the desire of broadcasters to reduce the cost of complying with statutory and regulatory obligations, and agrees that regulatory arrangements should not impose disproportionate costs on them. However, in the light of the statutory obligations on broadcasters to provide signing on television, and the intention that provision should be made for deaf people who do not find subtitling a suitable form of access, Ofcom remains of the view that it would not be sufficient for low audience channels to replace sign-interpretation with extra subtitling, or indeed, to be relieved of signing obligations entirely. It notes, too, that many channels already exceed their subtitling obligations, so that there might be no net benefit to deaf viewers from increasing subtitling targets, which in any case are due to rise progressively to 80%.
- A1.38 Ofcom set out three options in the consultation paper, including retaining the status quo (Option 1); excluding low-audience channels from the current requirements to

meet the statutory targets for signed programmes but requiring them to substitute additional subtitling for their current signing requirements (Option 2); and excluding low-audience channels from the current requirements, and imposing a requirement on those channels to make a smaller amount of sign-presented programmes unless acceptable alternative arrangements are in place, for example participation in the proposed sign zone on the Community Channel (Option 3). Ofcom asked whether consultees agreed that Ofcom had identified appropriate options.

- A1.39 Some deaf groups (DST, RNID, TAG), two multi-channel broadcasters and others (ITFC and the UK Film Council) agreed that Ofcom had identified appropriate options. Another (BDA) said that it supported the third option. Like another respondent (BV), the BDA wanted deaf sign language users to control and staff the production of signed television programmes.
- A1.40 While Ofcom understands the desire of deaf groups to ensure that deaf people have a strong or controlling role over any voluntary arrangements entered into by broadcasters as an alternative to requirements that would otherwise be imposed for the provision of sign-presented programming by excluded channels, it is not within Ofcom's remit to make this a requirement. However, in considering whether alternative requirements should be imposed in relation to individual broadcasters, Ofcom expects that, in implementing any alternative arrangements entered into on a voluntary basis, broadcasters will comply with the requirement set out in the Code on Television Access Services that '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'³⁶. It will also expect broadcasters to comply with the guidance set out in Appendix 3 to the Code (reproduced as Annex 3 to this Statement).

Option 1

- A1.41 Commenting on Option 1 (continuing with sign-interpretation on low audience channels), a number of broadcasters (ITV, Discovery and a multi-channel broadcaster) questioned whether the case had been made that the status quo was no longer appropriate; ITV SignPost went further, and said that Ofcom was wrong to say that doing nothing was not an option, and that existing research pointed to the benefits of sign-interpretation. A number of broadcasters (Five, SCBG, and a multi-channel broadcaster) argued that broadcasters should be allowed to choose for themselves whether to continue with sign-interpretation or pursue alternatives.
- A1.42 As regards the question of whether low audience channels should continue to be subject to the current statutory obligations, Ofcom notes that there was general agreement on the part of consultees that very few sign language users watch sign-interpreted programmes on low audience channels. In the light of the evidence referred to in paragraphs 3.8 to 3.9 above, Ofcom considers that it is clear that the existing obligations deliver little benefit to the intended audience. Having regard to the factors set out in section 303(8) of the Act, we therefore consider that sign-interpretation is not an effective means for low audience channels to promote the understanding and enjoyment of television by sign-language users and that they should be excluded from the current arrangements. It follows that we disagree with those consultees who argued that the case for change has not been made, and that

³⁶ Paragraph 34, Code on Television Access Services (as amended) (<http://www.ofcom.org.uk/tv/ifi/codes/ctas/>).

commissioning further research would serve only to delay the implementation of arrangements to better meet the needs of sign language users.

- A1.43 One public service broadcaster (Five) said that it saw no justification for the 1% audience share threshold, and that it was not clear what benefit there would be in forcing the seven non-public service channels with an audience share above 1% to continue providing sign-interpreted programmes. If these channels were allowed to contribute to a sign zone, they could bolster its position; conversely, as the audiences of other channels grow, there is a risk that over time, fewer channels would be able to support the sign zone.
- A1.44 As regards these points, Ofcom notes that, in making decisions about whether to exclude any programmes or channels from the current statutory obligations, it must have regard to the criteria set out in section 303(8) of the Act, in particular those set out in paragraph 3.17 above. With these in mind, the proposed threshold of 1% reflects a judgement by Ofcom that channels with an audience share of 1% or more have the potential to serve a worthwhile number of sign language users, and to provide them with access to a wider range of programming than would be available if they were excluded from the arrangements set out in section 303(5). However, it should be noted that Ofcom made clear in paragraph 3.22 of the consultation paper that in the case of channels with an audience share of just less or just more than 1%, it would exercise its discretion as to whether or not it was appropriate to exclude any particular channel, having regard to the criteria in section 303(8). Moreover, in the light of experience, it may be appropriate to adjust the threshold. Ofcom has also made clear that it expects to review the arrangements in the light of experience, which will enable it to take account of the experiences of both sign language users and broadcasters.

Option 2

- A1.45 As regards Option 2 (additional subtitling in place of signing on low audience channels), some broadcasters said that the provision of additional subtitling was not an adequate alternative to signing (SCBG and a multi-channel broadcaster). Others argued that that this possibility should not be dismissed given that it could benefit many more hearing-impaired people (ITV), and that broadcasters should be allowed to substitute subtitling for signing, perhaps on an occasional basis (a multi-channel broadcaster).
- A1.46 Ofcom notes that while many deaf people use subtitling, not all find it sufficient to understand and enjoy television. In this connection, we note research quoted by the DST, which found that deaf people were significantly less likely to retain information in subtitling than those who were hard of hearing³⁷. Moreover, given that many channels already exceed their subtitling obligations, there might be little or no net benefit to deaf and hard of hearing viewers. Consequently, having regard to the policy objectives, we do not consider that Option 2 would be appropriate.

Option 3

- A1.47 Option 3 envisaged that low audience channels would be obliged to schedule 30-60 minutes of sign-presented programming each month. Both Five and SCBG expressed scepticism that sign language users would watch these programmes. Ofcom notes that, despite the scepticism of some broadcasters about the demand

³⁷ *Sign on television – analysis of data*, Deaf Studies Trust
(http://www.ofcom.org.uk/consult/condocs/signing/responses/deafstudies_annex.pdf).

for sign-presented programmes on low-audience channels, 'See Hear', currently the only sign-presented programme on UK television, attracts audiences averaging 160,000 viewers³⁸. In the light of the clear desire of deaf groups representing the interests of sign language users for more sign-presented programming, Ofcom considers it likely that it will attract more viewing from sign language users than sign-interpreted programming. However, Ofcom does agree that, without appropriate publicity, sign-presented programmes will be even more difficult to find than the larger number of sign-interpreted programmes currently broadcast. Accordingly, Ofcom will expect broadcasters to publicise the availability of signed programmes, as required by the Code on Television Access Services.

- A1.48 ITV Signpost drew particular attention to the fact that the views of children and young people had not been taken adequately into account. It criticised the concept of a sign zone on the Community Channel as opaque and vague and said that Ofcom's suggestion that it would consider exempting channels on the basis of their genre (e.g. film channels) was based on anecdotal information and seemed to ignore published research on what deaf people say they want to watch.
- A1.49 As regards the suggestions from ITV Signpost that certain genres (e.g. film channels and children's channels) be required to continue with sign-interpretation, Ofcom will consider whether or not it is appropriate to exclude particular channels in the light of the factors set out in section 303(8) of the Act. In weighing these factors, Ofcom will have regard (amongst other things) to the extent of the benefit provided and, in doing, so will seek the views of groups representing the interests of deaf people, including deaf children. It notes that the data provided by ITV SignPost did not shed light on whether respondents preferred sign-interpreted or sign-presented programmes, and that two respondents associated with sign language users (BV and another) have disavowed the conclusions which ITV SignPost drew.

Proposed arrangements

- A1.50 In paragraph 3.32 of the consultation paper, Ofcom proposed that the existing arrangements should continue on public service channels and those with an audience share of 1% or more, but that channels with a smaller audience share should generally be expected to replace sign-interpreted programmes with a smaller amount of sign-presented programming broadcast between 7am and 11pm. However, those channels could, if they wished, enter into acceptable alternative arrangements, of which the proposed sign zone on the Community Channel was a possible example. Ofcom proposed that the new arrangements be reviewed after 12 months in operation. We asked whether consultees agreed with these proposals.

Exclusion of low audience channels

- A1.51 There was general support for the proposals from deaf groups (BDA, RNID and TAG) and from some others (ITFC and the UK Film Council). Deaf groups (BDA, BV, RNID) and others (DST) agreed that low audience channels should cease to provide sign-interpretation; one (RNID) said that the decision to exclude smaller channels with an audience share of less than 1% should also lead to a much better balance between sign-interpreted and sign-presented programmes, of which there were too few, despite being the preferred option for many deaf people.

³⁸ *See Hear* is a magazine-type programme which is shown first at 1pm on Tuesdays on BBC2, and is repeated at 1.15am on Wednesday on BBC1. The estimated audience figures were provided by the BBC and include repeats.

- A1.52 Broadcasters (BSkyB, Discovery, Five, Playboy TV, SCBG and two multi-channel broadcasters) were generally opposed to any mandatory requirement on them to produce sign-presented programmes, and wanted to retain the option of broadcasting sign-interpreted programmes, if only for a grace period (ITV). Two broadcasters (C4, Five) said that, as Ofcom had already determined through discussions with broadcasters that they disliked the idea of sign-presented programmes on their channels, it was inconsistent to propose this.
- A1.53 Ofcom does not consider that it would be appropriate for low audience channels to be required to continue discharging their obligations by providing sign-interpretation that is watched by very few people and hence delivers little if any benefit (see paragraph A1.11 above). Neither does Ofcom agree that, simply because broadcasters have indicated that they would not voluntarily agree to schedule sign-presented programmes, it is inconsistent to impose regulatory requirements on excluded channels for them to do so. The purpose of these requirements is to better meet the needs of sign language users.
- A1.54 The RNID welcomed the continuing requirement for public service channels to provide signing under the existing arrangements. However, BV, pointing to earlier decisions by Tyne Tees (ITV), Channel 4 and the BBC to eliminate or cut back on sign-presented programming, was not convinced that they should be excluded from the arrangements for low audience channels. Of those broadcasters who commented, two (C4 and one multi-channel broadcaster) agreed that it would be appropriate for public service channels to continue with sign-interpretation before digital switchover, though the arrangements should be reviewed then (C4). However, Five could see no rationale for treating PSB channels differently from others, nor for the 1% cut-off point on low audience channels - it noted that such channels could contribute to the sign zone, but might be obliged to withdraw their support later as their audiences surpassed the 1% threshold.
- A1.55 Ofcom agrees that there would be merit in reviewing the arrangements for public service channels at digital switchover, but considers that, for the time being, there are good reasons for maintaining the current arrangements on public service channels, including protecting the interests of analogue-only viewers pending digital switchover, and safeguarding diversity of signed programming in a period of significant change.

Requirement for sign-presented programmes

- A1.56 For the reasons set out in paragraphs A1.20 to A1.26, Ofcom does not agree with those broadcasters and access service providers who argue that there is not enough evidence to justify the conclusion that sign language users would prefer sign-presented programmes to sign-interpretation on low audience channels.
- A1.57 Some broadcasters argued that few sign language users would bother to view sign-presented programmes on their channels. Ofcom notes that, despite the scepticism of some broadcasters about the demand for sign-presented programmes on low-audience channels, 'See Hear', currently the only sign-presented programme on UK television, attracts audiences averaging 160,000 viewers³⁹. However, Ofcom does agree that, without appropriate publicity, sign-presented programmes will be even more difficult to find than the larger number of sign-interpreted programmes

³⁹ *See Hear* is a magazine-type programme which is shown first at 1pm on Tuesdays on BBC2, and is repeated at 1.15am on Wednesday on BBC1. The estimated audience figures were provided by the BBC.

currently broadcast. Accordingly, Ofcom will expect broadcasters to publicise the availability of signed programmes, as required by the Code on Television Access Services.

- A1.58 Red Bee said that the option of increasing the amount of sign-presented programming also had the disadvantage of removing sign language users from mainstream broadcasting. As public service channels and channels with an audience share of 1% or more account for the majority of television viewing in UK households, Ofcom considers that maintaining the existing arrangements on these channels will be sufficient to address concerns that sign language users might be denied access to mainstream broadcasting⁴⁰.
- A1.59 Accordingly, Ofcom has concluded that the new arrangements for signing on low audience channels that are excluded from the current arrangements should aim to secure an appropriate amount of sign-presented programming in place of sign-interpreted programmes.

Avoiding disproportionate burdens on broadcasters

- A1.60 Several broadcasters (Discovery, Five, SCBG and one other multi-channel broadcaster) argued that the cost of producing sign-presented programming would be disproportionately expensive, and that even relatively cheap studio-based productions would be much higher than the Community Channel's estimate. One (Sparrowhawk) said that library-based channels would have the added burden of commissioning programmes from an external source.
- A1.61 Ofcom agrees that sign-presented programmes would cost more than sign-interpretation, and that production costs could vary significantly, depending on decisions by broadcasters on genre, on production values, and on whether programmes should be studio-based or not. Nonetheless, Ofcom anticipates that broadcasters will seek to minimise their expenditure, on the grounds that the programmes would not attract much (or any) advertising revenue. There are a variety of ways in which broadcasters might do this, including (as one broadcaster suggested) magazine-style formats or narrative programmes. For the reasons discussed in more detail in paragraphs A4.30 to A4.31 of the Impact Assessment at Annex 4, Ofcom considers that costs of £30,000 per half-hour represent a reasonable central estimate within a range of possible costs.
- A1.62 Ofcom accepts that it should avoid imposing disproportionate burdens on broadcasters. For the reasons explained in paragraph A4.10 of the Impact Assessment, we consider that Ofcom's task is to consider how Parliament's intentions can be implemented in a proportionate manner. In this connection, Ofcom has said it will take account of the assessed cost of any new signing arrangements in determining whether spending on access services by broadcasters is under the limit of 1% of their relevant turnover⁴¹. Ofcom has previously concluded, following consultation, that this limit would be appropriate to ensure that broadcasters do not face disproportionate costs in providing access services. Ofcom confirmed this position following the Access Services Review⁴². Accordingly, Ofcom considers

⁴⁰ In 2006, public service channels accounted for over two thirds of UK audience share (70%), while channels with an audience share of 1% or more (ITV2, ITV3, E4, Sky One, Sky Sports One and UKTV Gold) accounted for a further 7.7%.

⁴¹ Paragraph A5.27 of 2007 Signing Proposals.

⁴² Paragraphs 2.54 to 2.56, *Television Access Services Review – Statement*, Ofcom, 27 September 2006 (<http://www.ofcom.org.uk/tv/ifi/codes/statement/ars.pdf>).

that, by taking account of the assessed cost of expenditure on signing within the 1% limit, it will ensure that the costs placed upon broadcasters are not disproportionate.

- A1.63 Ofcom also recognises that channels that do not currently commission programmes will face inconvenience in having to commission or acquire sign-presented programming. Nonetheless, Ofcom does not consider this an insuperable obstacle; almost all of the broadcasters currently subject to access service obligations own channels for which they commission programmes from time to time, and consequently have relevant expertise available within their groups.
- A1.64 A number of broadcasters commented on the costs of contributing to the sign zone proposed by Sky and the Community Channel. This is discussed below under 'Community Channel sign zone'.

Scheduling of sign-presented programmes

- A1.65 Several broadcasters argued that the requirement to schedule programmes between 7am and 11pm represented an unwarranted intrusion in editorial matters (C4, ITV, SCBG and two multi-channel broadcasters); one noted the same did not apply to other access services (ITV). SCBG made similar points and said that, as the majority of viewers found signing intrusive and distracting, broadcasters naturally had to schedule sign programming at times when it was least disruptive. By contrast, one individual said that while the proposed window for showing sign-presented programmes was preferable to the current situation, it remained too broad, and would not prevent programmes from being shown at inconvenient times.
- A1.66 Ofcom accepts that sign-presented programmes are unlikely to appeal to a general audience, but does not consider that using its discretion under section 303(10) to impose a requirement on excluded channels that includes an obligation to broadcast a small amount of sign-presented programming each month of such programming between 7am and 11pm would be unreasonable or represent an unacceptable intrusion into editorial matters, having regard to its general duties under section 3 of the Act and the reasonable wish of sign language users to be able to watch television programmes at times other than very late at night or early in the morning. Ofcom notes that those who use subtitles or audio description to watch television are able to benefit from a much larger selection of programming shown at various times across the day, including peak times.
- A1.67 Accordingly, Ofcom considers this requirement to be both justified and proportionate – without such a stipulation, it is likely that broadcasters would continue to schedule signed programming at unsociable hours; nonetheless, the 16 hour window will allow most broadcasters significant scope to schedule the programme in ways that minimise the risk of lost advertising revenue. While sympathising with the respondent who would like to see sign language programmes screened at peak viewing times, Ofcom considers that the arrangements it has set out strike the right balance between making it easier for the small number of viewers who use sign language to see programmes at better times, and avoiding a disproportionate impact on other viewers and broadcasters.

Timing of new arrangements

- A1.68 Ofcom asked whether consultees agreed that the aim should be to put any new arrangements in place from the start of 2008.

- A1.69 Deaf groups (BDA, RNID, TAG) and others (DST) and some individual respondents) agreed that new arrangements should be put in place as soon as possible. Two broadcasters (S4C and two multi-channel broadcasters) agreed that the aim should be to start in 2008, though two (S4C and a multi-channel broadcaster) said that, if this were to happen, clear guidelines would need to be in place some months in advance. On the assumption that a sign zone on the Community Channel would proceed as an acceptable alternative to any requirements imposed on excluded channels under section 303(10), the BDA said that the Trust should be allowed sufficient time to prepare properly, a point echoed by an individual respondent.
- A1.70 However, the consensus amongst most respondents was that more time was needed. Several broadcasters (Five, ITV and a multi-channel broadcaster), referring to the possibility of a sign zone on the Community Channel, said that more time was needed to develop this proposal, and that there would be a lead time between a new venture being established and the start of programming - ITV suggested that September 2008 was the earliest realistic time for this, and that even this might slip. ITV SignPost said that the opportunity existed to take better informed decisions by implementing changes in 2009, and should be taken. One access service provider (Red Bee) also suggested that the timescale was rather challenging, while another (ITFC) said that it was already making its revenue forecasts for 2008, and urged that the process be delayed by one year, as did the UK Film Council.
- A1.71 Ofcom notes that, given the interest cited by both broadcasters and deaf groups, there is a reasonable chance that acceptable alternatives to the regulatory requirements that would otherwise be imposed on excluded channels will be developed and proposed, and is willing to allow further time for alternatives to be developed. Ofcom also recognised that if a new venture is established, it will require time before it will be ready to put arrangements into place. The detailed implementation arrangements set out Annex 3 to the Statement take this into account.

Potential impact on provision of access services generally

- A1.72 In the light of the policy objective of not significantly reducing the amount of subtitling, and having regard to the interests of users of other access services (audio description and signing), Ofcom has considered the wider repercussions of changes to the signing arrangements and how these might be minimised.
- A1.73 The introduction of new signing arrangements will coincide with a significant increase in the amount of subtitling required on channels subject to the Code, together with smaller increases in the amount of signing and audio description. The cumulative effect of this will be to increase significantly the costs of providing access services. As on the last occasion when there was a significant increase in subtitling obligations, Ofcom will be looking at whether access service costs have changed, so that this can be taken into account in the annual review of which channels will be required to provide access services with effect from 1 January 2009. The other key factors in determining how many channels will provide access services in 2009 are data for the whole of 2007 on the audience share and relevant turnover of different channels. This data will not be available for some months. Nevertheless, it is possible that, given the increase in subtitling costs, the number of channels that can afford to provide access services within the cap of 1% of relevant turnover could fall, even if the signing arrangements were to continue unchanged. We do not consider that it is necessary to make changes to the signing targets applying to public service channels or those with an audience share above 1%, as

even though costs will rise over time, it is unlikely that they could not be met from within the 1% expenditure cap.

- A1.74 Having regard to the fact that many sign language users also make use of subtitling, and Ofcom's policy objective that any new arrangements for signing should not result in a significant reduction in the amount of subtitling, we have considered the possible impact of raising the amount of sign-presentation from 30 minutes to 45 minutes at the fifth anniversary of the relevant date, which for many channels would be at the beginning of 2009. It appears possible that the extra cost would have the perverse effect of reducing the number of channels providing subtitling and signing. Accordingly, we believe that it would be appropriate to maintain the level of sign-presentation at 30 minutes per month until the review that will be carried out prior to digital switchover, and this is reflected in Ofcom's decision in section 5.

Community Channel sign zone

- A1.75 Several respondents commented on the proposal for a Trust to administer any funds subscribed for a sign zone on the Community Channel, which Ofcom has indicated might be an acceptable alternative to imposing regulatory arrangements on excluded channels under section 303(10).

Role of deaf people

- A1.76 Deaf groups (BDA, BV, VS) and individuals emphasised the importance of a strong role for deaf people in operating a Trust that would pay for signed programmes on the Community Channel. BV said that those channels that chose to broadcast sign-presented programming instead of participating in the Community Channel sign-zone should use this opportunity to create employment opportunities for deaf people. As regards the Community Channel concept, it said that in editorial, production and technical areas, the teams should involve the maximum possible representation of deaf sign language users, and the minimum possible number of hearing people. VS also said that the Community Channel should not be the only third party option for broadcasting deaf programmes.
- A1.77 Ofcom understands the desire of deaf groups to ensure that deaf people have a strong or controlling role over any alternative arrangements entered into by broadcasters on a voluntary basis as an alternative to requirements that would otherwise be imposed for the provision of sign-presented programming by excluded channels. However, it is not within Ofcom's remit to make this a requirement. Nonetheless, in considering whether alternative requirements should be imposed in relation to individual broadcasters, Ofcom will expect that any alternative arrangements entered into on a voluntary basis comply with the requirement set out in the Code on Television Access Services that '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'⁴³. It will also expect broadcasters to comply with the guidance set out in Appendix 3 to the Code (reproduced as Annex 3 to this Statement).
- A1.78 Several broadcasters (Discovery, Five, ITV, Sparrowhawk and two other multi-channel broadcasters) in principle supported the idea of a sign zone on the

⁴³ Paragraph 34, Code on Television Access Services (as amended) (<http://www.ofcom.org.uk/tv/ifi/codes/ctas/>).

Community Channel as an alternative to imposing alternative requirements on excluded broadcasters. A multi-channel broadcaster (Discovery) described it as the most credible and widely-supported solution to the problems identified by Ofcom, while a public service channel (C4) said that the proposal had the advantages of being cost-effective, targeted, impactful and proportionate. One multi-channel broadcaster said that it was interested in providing sign-presented programming to the Community Channel; another (Sparrowhawk) said that producing sign-presented programming was only feasible if broadcasters could enter into a voluntary arrangement to share costs, and that it would choose to do so.

- A1.79 However, although one broadcaster (C4) recognised that Ofcom was not empowered to mandate participation in such a scheme, most wanted Ofcom to take a lead in developing it further (Discovery, Five, Sky and one multi-channel broadcaster). SCBG asked for concrete information about how it would work in practice, the exact cost implications and the level of control and representation that SCBG members would have. Two broadcasters (C4 and a multi-channel broadcaster) asked for clarification on issues such as the criteria for acceptable alternative arrangements, the governance arrangements for any Trust set up to fund signed programmes on the Community Channel, how it would monitor compliance with the Trust's instructions, and whether the success or otherwise of the Trust would be reviewed periodically.
- A1.80 While Ofcom welcomes the high level of interest in the idea proposed by Sky and the Community Channel for a sign zone, it emphasises that this is by no means to the exclusion of any other proposals broadcasters may wish to put forward. As Ofcom explained in the consultation document, it is not able to impose voluntary arrangements, and it is for broadcasters themselves to propose these. As SCBG notes, Ofcom facilitated a briefing for broadcasters by the Community Channel and the Working Group in July, and a number of SCBG members accepted an invitation from the Community Channel for further discussions about governance and other issues. Ofcom is willing to facilitate further such discussions if necessary, and to respond to other proposals for alternative arrangements. However, Ofcom does not consider that it would be helpful or efficient to act as an intermediary, as broadcasters might continue to look to Ofcom to develop alternatives to the regulatory requirements it imposes under section 303(10), when the choice over whether to do so rests with them.

Broadcasters' contributions to alternative arrangements

- A1.81 Responding to Ofcom's suggestion that an annual contribution of around £20,000 might be appropriate, one (Discovery) said that it was reasonable and proportionate; another (Sparrowhawk) said that while it might not be excessive, it might represent more than channels were currently spending on sign-interpretation. Two broadcasters (Five, ITV) suggested that the arrangements set out in the consultation paper amounted effectively to coercion, as it appeared that the alternative arrangements would be much cheaper than the proposed new regulatory requirements.
- A1.82 Ofcom rejects this argument. Ofcom's policy objective, having regard to its statutory duties, is to increase the amount of sign-presented programming available to sign language users, whether this is achieved on licensees' channels, or in other ways that provide an acceptable alternative to the requirements Ofcom proposes to impose on excluded channels under section 303(10). Ofcom has proposed what it considers to be the minimum credible amount of sign-presented programming (30 minutes a month, as compared with an equivalent obligation to provide over 7 hours

of sign-interpreted programming a month for broadcasters subject to a 2% signing target). It is this amount that is the sole determinant of the estimated cost of £60,000 per annum for meeting the regulatory requirements for excluded channels which were proposed in the consultation document. By contrast, Ofcom considers that, because a collective approach to delivering more sign-presented programming (for example through a sign zone on the Community Channel) would secure greater economies of scale as well as providing the advantage for sign language users of a single destination, it would be appropriate for channels contributing to such an arrangement to contribute a figure at the low end of the range of costs between the estimated annual costs of £18,800 to comply with a 2% signing target using sign-interpreted programming, and the estimated cost of £60,000 per annum for meeting the regulatory requirements proposed in the consultation document.

- A1.83 Information TV said that Ofcom's apparent support for the Community Channel appeared to be a direct intervention in a manner which could distort competition in the market, tantamount to a levy on some channels to be handed to another channel, selected without consultation or tender.
- A1.84 Ofcom does not agree with Information TV's assertion that the discussion of the Community Channel proposal in Ofcom's consultation paper represents a direct intervention in a manner which could distort competition in the market, tantamount to a levy on some channels to be handed to another channel, selected without consultation or tender. Ofcom notes that the proposal emanated from industry, and that it was sensible for the consultation paper to refer to it, as it is the only firm proposal made to date that has attracted widespread interest from broadcasters and deaf groups as an alternative way of delivering more sign-presented programming. Ofcom made clear in the consultation paper that it will consider any proposals for alternative arrangements when deciding whether or not to impose the new regulatory requirements on excluded channels. It is possible for more than one set of alternative arrangements to be approved, and it is for individual broadcasters to decide whether they wish to participate in alternative arrangements, and if so, which.

Related issues

- A1.85 ITFC noted that the Community Channel was only available free-to-air on DTT for 3 hours between 6am and 9am, so sign language users wishing to benefit from signed programming shown on the channel at other times would need to purchase a cable subscription or free-to-air satellite equipment.
- A1.86 Ofcom notes that analogue-only viewers will be unaffected; that the Community Channel has proposed that DTT viewers will benefit from signing at least once a week in its morning free-to-view slot; and that those who choose to subscribe to cable or satellite packages will have access to signed programmes on the Community Channel whenever these are scheduled.
- A1.87 The BBC, while not commenting directly, said that it would continue to supply the Community Channel with special editions of its sign-presented programmed 'See Hear' on a voluntary basis. Ofcom welcomes the BBC's continued support for the Community Channel's provision for deaf people.

Impact assessment

- A1.88 Ofcom asked whether any consultees had any comments on the impact assessment, and said that where possible, it would be useful for arguments about

the cost of different options to be supported by relevant data. These comments, and Ofcom's response, are summarised in the revised Impact Assessment at Annex 4.

Code revisions

- A1.89 Ofcom set out proposed revisions to the Code in Annex 7 to the consultation, and asked whether consultees considered that the proposed revisions to the Code were sufficiently clear.
- A1.90 There was general agreement from deaf groups (BDA, DST, RNID, TAG), broadcasters (Information TV, ITV, S4C and three multi-channel broadcasters) and others (Red Bee Media and the UK Film Council) that the proposed revisions to the Code are sufficiently clear, though not all agreed that they were appropriate, for the reasons stated in response to other consultation questions. One individual said that until the Code was produced in the language (i.e. BSL) of the target audience it is intended to affect, it could never be sufficiently clear. A broadcaster (ITV) said that it was crucial for guidance to be provided on how the voluntary alternative arrangements will work in practice.
- A1.91 Ofcom notes that there was general agreement that the proposed changes to the Code were sufficiently clear. These changes, which reflect the revised timing, are set out in Annex 2⁴⁴. Supplementary guidance on the criteria that Ofcom will use in assessing whether proposed alternative arrangements are acceptable will be set out in Appendix 3 to the Code on Television Access Services, and is reproduced in Annex 3 to this Statement.
- A1.92 The Code is intended to provide guidance to broadcasters about how they should fulfil their obligations, and has not been prepared with the general public in mind. For this reason, Ofcom does not consider that it is necessary or appropriate to translate the Code into BSL. However, it is publishing a Plain English summary of its decision, which explains the effects of the revised Code.

Other issues

- A1.93 Those who commented on the proposals for a review were in general supportive (ITV), though SCBG and a multi-channel broadcaster argued that a trial period of two years rather than one was more appropriate; SCBG suggested that a full evidence-based consultation should take place at that time. Ofcom agrees that a reasonable period should be allowed before the new arrangements are reviewed, and is minded to undertake a review in 2010, so that any changes that may be appropriate can be put in place at digital switchover, if appropriate.
- A1.94 Some respondents (BV and some individuals) suggested that the quality of many BSL on-screen interpreters was left much to be desired, while another (DST) said that research indicated that sign language users preferred Deaf signers on television to hearing interpreters. The reasons advanced for this include claims that signing by native signers is better, that hearing interpreters should focus on jobs where their services are most needed (e.g. providing access for deaf people to public services), and that television for deaf people should provide employment for deaf people.
- A1.95 Ofcom notes that Deaf groups and individuals have expressed a strong preference for sign-interpretation to be done by deaf signers. Given its statutory remit, Ofcom's

⁴⁴ The full version can be found at <http://www.ofcom.org.uk/tv/ifi/codes/ctas/>.

concern must be for the standards of interpretation provided to sign language users, and as such, it will consider specific complaints about particular programmes.

Annex 2

Changes to the Code on Television Access Services

An extract from the Code on Television Access Services, with the amendments underlined, is shown below. The full Code can be found on Ofcom's website at <http://www.ofcom.org.uk/tv/ifi/codes/ctas/>.

Excluded programmes

10. Ofcom may exclude programmes and services having regard, in particular, to:
- (a) the extent of the benefit which would be conferred by the provision of the assistance for disabled people in relation to the programmes;
 - (b) the size of the intended audience for the programmes;
 - (c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
 - (d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom ;
 - (e) the technical difficulty of providing the assistance; and
 - (f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.
11. Having regard to these factors, television services achieving an average audience share of all UK households over a 12 month period ('audience share') of 0.05% or less are excluded from providing television access services. Ofcom would expect to exclude television services achieving a audience share of 1% or less from providing signing, but will consider, in the light of the factors set out above, whether or not channels with an audience share of slightly more than or slightly less than 1% should be excluded.

Alternative requirements

12. Section 303 (10) (c) of the Act allows Ofcom to impose alternative requirements with respect to the provision of assistance for disabled people in relation to any programmes or services it has excluded. In considering whether alternative requirements should be imposed on individual channels, it is open to Ofcom to take into account any voluntary arrangements entered into by broadcasters that would also meet the needs of sign-language users more effectively.
13. Having regard to this, Ofcom requires that television services achieving an audience share between 0.05% and 1% should, from the first anniversary of the relevant date, broadcast between 7am and 11pm 30 minutes of programming presented in sign language each month⁴⁵. Ofcom will keep this requirement under review.
14. Broadcasters may, if they wish, propose alternatives to the arrangements set out in paragraph 13, and Ofcom will consider these in the light of the factors set out in paragraph 10, the needs of people with hearing impairments and the guidance set out in Appendix 3 to the Code. Further guidance on this is set out in Appendix 3 to the Code.

⁴⁵ Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

Cost

20. Ofcom has determined average costs per hour of providing programming with subtitling, signing and audio description, including any alternative requirements imposed in accordance with paragraph 13. These have been used to calculate the costs of three levels of provision:

- (a) Level One equates to the full current annual targets for subtitling, signing and audio description, as well as any alternative requirements;
- (b) Level Two equates to 66% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description, and any alternative requirements; and
- (c) Level Three equates to 33% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description and any alternative requirements.

Annex 3

Guidance to broadcasters of relevant channels on arrangements for signing

Introduction

- A3.1 This Annex to the Code on Television Access Services sets out guidance for broadcasters of relevant channels on signing on television. Relevant channels 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 of all UK households over the preceding year of less than 1%; and
 - c) are excluded under section 303(9) of the Communications Act from the targets set out in paragraph 7 of the Code on Television Access Services ('the existing obligations').
- A3.2 Ofcom expects to notify broadcasters of relevant channels (subject to the timely provision by them of information on relevant turnover⁴⁶) 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 of less than 1%. For advance planning purposes, broadcasters currently subject to obligations under the Code on Television Access Services that spend less than 1% of the relevant turnover of relevant channels 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.

Regulatory requirements

- A3.3 From 1 January 2009, and in accordance with section 303(10)(c) of the Communications Act 2003, relevant channels will be required to transmit 30 minutes of sign-presented programming each month between 7am and 11pm. This amount is subject to review from time to time.
- A3.4 Broadcasters of relevant channels who wish to propose that they should not be subject to these regulatory requirements should follow the procedures below.

Alternative arrangements

- A3.5 Broadcasters of relevant channels that wish to enter into alternative arrangements for signing on a voluntary basis should submit proposals to Ofcom no later than 30

⁴⁶ 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.

June in the year before they wish to implement them. Failure to do so by this date is likely to result in such broadcasters being obliged to implement the regulatory requirements set out in paragraph A3.3.

- A3.6 Ofcom will consider proposals from individual broadcasters or groups of broadcasters of relevant channels for alternative ways of achieving the objective of making more sign-presented programming 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 on broadcasters that have submitted alternative proposals, Ofcom will have regard to the matters set out in paragraph A3.8 below.
- A3.7 Broadcasters may discuss possible alternative arrangements for relevant channels 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, they should submit proposals no later than 30 June in the year before they wish to implement them. Provided the proposals contain sufficient information, Ofcom will endeavour to decide whether or not to impose the regulatory requirements by 31 July.
- A3.8 In determining whether the regulatory requirements should be imposed on broadcasters that have proposed alternative arrangements, Ofcom will consider whether the alternative arrangements would be likely to provide better assistance for deaf people using sign language, and in particular whether they would:
- a) contribute to a diversity of sign-presented 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 programming;
 - c) ensure that the terms of access to sign-presented 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 of approximately £20,000⁴⁷. 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.
- A3.9 A broadcaster that has, in good faith and with Ofcom's agreement, contracted for the alternative arrangements to be implemented by a third party shall not be required to resume the implementation of regulatory requirements referred set out

⁴⁷ This figure represents the lower end of the range of current assessed direct costs of about £19,000 and the estimated cost of the regulatory requirements set out in paragraph A3.3 (£60,000 for a channel currently required to sign 2% of programming).

in paragraph A3.3 for the duration of the paid-for period of the contract, even if the third party fails to fulfil the requirements of the contract.

A3.10 This guidance will be reviewed from time to time.

Annex 4

Impact Assessment

Introduction

A4.1 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. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines on our website⁴⁸.

Introduction

A4.2 We are required by the Communications Act to review our Code on Television Access Services from time to time. The access services review carried out last year found that current arrangements for signing on television were not meeting the needs of sign language users. As a result we said that we would continue a dialogue with disability organisations and broadcasters on whether there were better ways of meeting the needs of sign language users.

A4.3 In May 2007, we published a consultation document⁴⁹ seeking views from stakeholders on three specific matters:

- a) firstly, on our proposals to determine that some low-audience channels should be excluded from their current obligations for sign-interpreted programming (with a signer displayed in the corner of the screen) on the basis of evidence suggesting that the costs incurred produce little or no benefit to the audience for access services;
- b) secondly, to consider whether we should impose alternative arrangements on those excluded services to provide greater benefit to audiences; and if so
- c) thirdly, to propose that when deciding whether to impose alternative arrangements, we should take into account any voluntary arrangements that have been entered into by those excluded services in order to provide other more effective and beneficial assistance for the disabled in the form of sign-presented programmes, either on those channels or in other ways (e.g. a sign zone on the Community Channel).

A4.4 The consultation document included a preliminary assessment examining the impact on sign language users, subtitle users, broadcasters and access service providers that the possible alternative arrangements might have and invited comments.

⁴⁸ *Better policy-making: Ofcom's approach to impact assessment* (http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf).

⁴⁹ *Signing on television – proposed changes*, Ofcom, 10 May 2007 (<http://www.ofcom.org.uk/consult/condocs/signing/signing.pdf>)

- A4.5 A number of responses to the consultation included comments on particular aspects of that impact assessment. Set out below is a summary of those comments and our response, indicating how we have taken them into account in updating our impact assessment. On that basis, the analysis in this Annex should be regarded as representing an impact assessment as defined in section 7 of the Communications Act 2003 (the Act).

The citizen and / or consumer interest

- A4.6 As set out in the main document, research and feedback from groups representing the interests of people who have a hearing impairment and who use sign language indicates that, in general, the existing obligations do not help them to understand and enjoy television on low audience channels. Ofcom considers that the citizen / consumer interest lies in putting alternative arrangements in place that would better suit their needs, but do not disadvantage significantly viewers who rely upon analogue television or other access services users. An additional dimension of the citizen interest is the need to retain access for sign language users to a broad range of programming that informs, educates and entertains.

Ofcom's Policy Objectives

- A4.7 As set out in the main document, our starting point is that the Government has made it clear that, as a matter of public policy, access to television for people with hearing and/or visual impairment should be broadened significantly. This intention is reflected in the provisions of the Communications Act. However, research and feedback from people who have a hearing impairment and use sign language indicates that the existing arrangements for the provision of signing on low audience channels are not meeting their needs.
- A4.8 Representatives of deaf groups have indicated a clear preference for sign presented programmes. At the same time broadcasters have expressed concerns that the increased use of sign presentation would require them to incur additional costs but would also reduce the appeal of such programming to mainstream audiences.
- A4.9 Given these tensions, the various alternatives to the current arrangements will all have various advantages and disadvantages. Against this background, Ofcom considers that its policy objectives should be to secure arrangements that better meet the specific needs of sign language users, and do not impose disproportionate burdens on broadcasters. However, these arrangements should not disadvantage sign-language users who rely exclusively on analogue television services nor should they result in a significant reduction in the amount of subtitling. In the light of the clear preference of sign language users for sign-presented programming, we consider that these alternative arrangements for excluded low audience channels should focus on increasing the amount of sign-presented programming on television, even if this results in some reduction in the amount of sign-interpreted programming on these channels.
- A4.10 Ofcom accepts that access service obligations should not impose disproportionate burdens on broadcasters. In proposing legislation that would require all licensed television services (except to the extent that their programmes or channels are excluded by Ofcom) to provide subtitling, signing or audio description, the Government made clear that it considers that access to television for people with hearing and / or visual impairments should be broadened significantly. Parliament approved the Government's legislative proposals. Accordingly, and having regard to

its statutory duties, Ofcom considers that its task is to give effect to the legislation in a manner which is proportionate, rather than to demonstrate that the public policy enshrined in the legislation is justified in terms of the benefits outweighing the costs.

Consultation responses

A4.11 Ofcom asked whether any consultees had any comments on the impact assessment, and said that where possible, it would be useful for arguments about the cost of different options to be supported by relevant data.

Consultees' comments

A4.12 Only a limited number of responses commented specifically on the impact assessment:

- a) one individual argued that it was inappropriate for the assessment to refer to the evidence that many deaf and hard of hearing preferred subtitling to signing, on the grounds that it was not the intention of Parliament that the low number of BSL users should exclude them from access to television;
- b) a multi-channel broadcaster argued that the assessment was flawed in that it fails to take into account the nature of the multi-channel environment. It argued that the low audience channels that would be affected by Ofcom's proposals were predominantly niche broadcasters with very specific remits, some of which were very costly genres to produce. As a result the viability and cost of production of sign-presented material would vary hugely between broadcasters and the burden will not be evenly distributed;
- c) ITV said that the assessment did not consider the opportunity costs of scheduling sign-presented programmes between 7am and 11pm. ITV noted and endorsed the acknowledgement in the assessment that there was likely to be a loss of advertising revenue. However, given that nature of the programming on ITV's non-PSB channels, it questioned whether this loss of advertising revenue would be partially offset by lower costs for sign-presented programming; and
- d) ITV also argued that the assessment failed to address the substantial damage which the proposed change would cause to ITV SignPost, both as a profitable business and a major employer of deaf people.

A4.13 In a confidential submission, an access service provider challenged Ofcom's assumptions that sign-interpreted programmes were 'generally' repeated six times and argued that Ofcom's assumption that broadcasters were spending around £18,800 a year on signing was not borne out by its experience. It argued that Ofcom's assumption of a cost of sign-interpretation of £644 per hour was above the rates it charged and this would in turn imply that broadcasters were commissioning more sign-interpretation than Ofcom assumed to be the case. It argued that Ofcom's numbers implied that other channels were in fact repeating programmes far more often, and 'thus paying nowhere near' the sum estimated by Ofcom. The provider argued that implementing the proposed changes in 2008 would have a significant impact on its business, and would force cost-saving measures.

Ofcom's response

A4.14 In response to the points summarised in paragraph A4.12 above, Ofcom:

- a) considers that evidence about the preferences of the deaf and hard of hearing between subtitling and signing is a relevant factor to take into account when considering whether the measures in place are meeting the objectives set by Parliament;
- b) recognises that the actual costs of meeting the specific signing obligations may vary by broadcaster depending on the nature of the programming that each broadcaster provides. We noted that, in commenting on the assessment, the broadcaster concerned did not attempt to quantify what it anticipated the cost of our proposals might be on its channels. In this context, Government has made clear its view that, as a matter of public policy, access to television for people with hearing and/or visual impairments should be broadened significantly. It is thus relevant that these obligations should apply to a range of content across a range of channels and broadcasters and means that different broadcasters may face different costs in complying with these obligations. However, in order to guard against some broadcasters incurring a disproportionate amount of expenditure to meet these obligations, we introduced an expenditure cap which limits overall expenditure on access services to 1% of a broadcaster's revenue. We therefore consider that there are already rules in place to address a concern that some broadcasters could face significantly higher costs than others;
- c) notes that, in terms of the opportunity cost to broadcasters of Option 3, the original IA made the point that broadcasters had previously argued that even late-night signed programmes imposed an opportunity cost on them. Under Option 3, there would be a reduction in the volume of sign-interpreted programming and therefore presumably a reduction in this aspect of the opportunity cost to broadcasters. We accept that this reduction in opportunity cost would be offset to some extent by the requirement to provide a limited amount of sign-presented programming per month between 7am-11pm and have recognised this in the revised assessment. However, Ofcom is not in a position to quantify this point – it will obviously depend on how broadcasters choose to schedule this programming. We note that ITV did not offer any data to illustrate its argument. In relation to possible alternative arrangements (e.g. a sign zone on the Community Channel), broadcasters would still benefit from a reduction in the opportunity cost of showing sign-interpreted programming late at night;
- d) notes that, in relation to the potential impact on access service providers, the IA in the consultation document did identify that there could be an impact in relation to companies, in-house staff and free-lancers providing sign-interpretation and estimated that this overall impact could be in the region of £0.9m. However, the IA also noted that some of this detrimental impact could be offset by a move by access service providers to produce sign-presented programming.

A4.15 In relation to the specific comments made by an access service provider, the IA that accompanied the consultation document acknowledged that the new arrangements will have an impact on the activities of companies providing sign-interpretation. It did not, however, attempt to quantify the impact on particular companies. The impact assessment attempted to quantify the impact on the sector as a whole. As

the assessment made clear, the assumptions we used in relation to repeat rates, average costs etc, were derived from data provided by a range of broadcasters for the Access Services Review. It was therefore not intended to be representative of the specific contractual circumstances of any particular access service provider.

- A4.16 We recognise the comment that the wording of footnote 19 was not accurate. The text in footnote 19 inadvertently referred to a worked example of a broadcaster with a 3% target although the actual numbers in the example were clearly based on 2% target (as would be correct for 2008). The text has now been amended. In addition there has been some confusion about Ofcom's use of the term "repeat rate". As should have been clear from the worked example, Ofcom used this "a repeat rate of six times" to mean a programme was transmitted a total of six times rather than meaning a first transmission plus 6 repeats. To avoid confusion, Ofcom has made this assumption clearer in this revised impact assessment. As referred to above, the repeat rate of six times was derived from the Access Services Review and is an average figure: some channels will therefore use a higher repeat rate and some will use a lower repeat rate. The access service provider that raised this issue did not provide any data or offer an alternative assumption as to what it considered the appropriate repeat rate ought to be.
- A4.17 If Ofcom were to use the specific data provided by that access service provider and to re-estimate the overall impact of the proposals – assuming that its assumptions are broadly accurate for other broadcasters – then that would suggest a total impact in the order of £1.2m rather than the £0.9m originally estimated. Ofcom recognises that – in percentage terms - this would amount to an increase of a third in on its original estimates but it does not consider that in absolute terms this fundamentally alters Ofcom's analysis.
- A4.18 However, recognising that access service providers and broadcasters will need a period of time to adjust to the new proposals, Ofcom now intends to defer the start of any new arrangements until the beginning of 2009. This is in fact a longer deferral than the access service provider requested. As set out elsewhere, Ofcom does not have the powers to compel low audience channels to opt for any particular acceptable alternatives.
- A4.19 The remainder of this Annex represents Ofcom's revised impact assessment in light of the comments discussed above.

Options considered

- A4.20 Ofcom has considered the following three options:
- a) retaining the present arrangements for signing on television (Option 1);
 - b) allowing low-audience channels to substitute additional subtitling for their current signing requirements (Option 2); and
 - c) excluding low-audience channels from the current requirements to meet the statutory targets for signed programmes, and substituting a requirement to make a smaller amount of sign-presented programmes, unless Ofcom concluded that voluntary alternative arrangements would secure the policy objectives (Option 3).

- A4.21 In addition, as explained in section 3 of the consultation document, Ofcom also considered a number of suggestions that were put to it, but decided that they were not appropriate.

Analysis of the different options

Option 1: retention of existing arrangements

Costs

- A4.22 The existing obligations deliver (in aggregate) a significant amount of signed programming) across a wide variety of channels, which helps to secure access to a diverse range of programming. The costs are also relatively modest, when compared to the costs to broadcasters of meeting subtitling targets. Data obtained for the Access Services Review indicated that the direct cost per hour of commissioning sign-interpreted programming was in the order of £644, and that broadcasters generally transmitted such programming about six times a year. Ofcom accepts that there will be some variability around these numbers but would emphasise that they represent assumptions derived from the Access Services Review.
- A4.23 Using these assumptions, a 24 hour channel⁵⁰ could expect to pay about £19,000 a year on direct costs⁵¹, together with a share of the indirect costs arising from the need to administer access service arrangements (commissioning or selecting programmes, and scheduling them) and to secure compliance with the targets (monitoring and reporting)⁵².

Benefits

- A4.24 As explained in the consultation document, the research Ofcom commissioned and the feedback we have received from sign language users and disability organisations representing their interests suggests that sign-interpretation on low-audience channels delivers little benefit to sign language users.
- A4.25 In these circumstances, it does not seem proportionate to continue to require low audience channels to comply with the existing rules and to incur these costs if they are delivering little in the way of benefits. Having regard to the criteria set out in section 303(8) of the Act, it is difficult to argue that low-audience channels should not be excluded from the current arrangements.
- A4.26 In addition, given that the current arrangements are not helping to meet the policy objective, we consider that this option should only be retained if it is not possible to

⁵⁰ A 24-hour channel would transmit a total of 8,760 hours per year. As a Level Two or Three channel it would have a 2% signing target in 2008 which would imply a total of 175 hours of signing over the year. If programming is repeated six times a year, that would imply around 29 hours per year of new programming.

⁵¹ Data collected for the access services review shows that the hourly cost for signing paid by broadcasters at the end of 2005 ranged between £600 and £880, with a mean price of £644. Assuming around 29 hours per year of new sign-interpreted programming, the direct costs of a broadcaster would be about £18,800 which we round up to £19,000. In addition there could be certain overheads and opportunity costs on top.

⁵² If we were to assume a repeat rate of 3 (i.e. the programme is transmitted three times) then the annual cost would be around £37,500. Equally if we assume a repeat rate of 9, then the annual cost would fall to around £12,500.

identify a practicable alternative that would be more likely to secure the policy objective, and if it can be justified in relation to its statutory duties.

Option 2: low audience channels to replace sign-interpretation with more subtitled programming

- A4.27 Where we have excluded programmes or services, the Communications Act allows us to impose alternative arrangements in relation to excluded programmes or services (section 303(10)(c)). A number of broadcasters suggested that they be allowed to provide additional subtitling instead of meeting their signing arrangements.
- A4.28 While superficially attractive (research suggests that many sign language users also use subtitling to watch television), we concluded that this would not meet the policy objective. It would be unlikely to deliver much incremental benefit to those sign language users who could use subtitling, or to other subtitle users, since many broadcasters already provide more subtitling than they are required to under the Code on Television Access Services, and so could meet revised targets without actually providing more access services⁵³. In addition, it would not meet the needs of those sign language users who found it difficult or impossible to use subtitling. Accordingly, we concluded that this would not meet our policy objective, and have not carried out further analysis.

Option 3: replacement of sign-interpreting targets with targets for sign-presented programming

- A4.29 For reasons set out in the main document, the option we have considered would be to require that television services achieving an audience share between 0.05% and 1% should, from the first anniversary of the relevant date, broadcast between 7am and 11pm 30 minutes of programming presented in sign language each month⁵⁴. We propose to keep this requirement under review.

Costs

- A4.30 Data provided by the Community Channel suggested that the cost of a basic sign-presented half-hour programme would be around £30,000. Ofcom recognises that actual costs will vary by genre of programming. Some respondents to the consultation have suggested that certain forms of programming could be done for costs of £17,000 per half-hour whereas others have suggested that it would be significantly higher (e.g. £80,000 per half-hour for studio based programming and increasing for more expensive type of programmes, on-location filming etc). Costs will thus vary according to the genre of a channel, the programme format it adopts, its production values, and the number of programmes in a series. Programme-making in some genres may present greater challenges than others.
- A4.31 While Ofcom would not discourage broadcasters from making more expensive types of programmes, we anticipate that they would seek to minimise their expenditure on the grounds that the programmes would not attract much advertising revenue. There are a variety of ways in which broadcasters might do this, including (as one broadcaster) magazine-style formats or narrative programmes. On the

⁵³ See, for example, the report covering the four quarters of 2006 (http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tvaccessrep/q406/).

⁵⁴ Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

basis of information available to it, Ofcom does not consider that it is unreasonable to adopt the costing assumption suggested by the Community Channel and to use a cost of £30,000 per half hour. We note that some broadcasters have expressed an interest in making sign-presented programmes at that rate.

- A4.32 A target of 30 minutes of sign-presented programming per month would equate to 6 hours of such programming per year. One broadcaster said that, on this basis, a low audience channel could face costs of £360,000 a year (assuming six hours of programming at £60,000 per hour). However, this assumes that such programming would not be repeated, whereas it is the practice of most broadcasters of low-audience channels to transmit programmes multiple times. As indicated before, for the purposes of the Access Services Review, broadcasters were asked how often they repeated programmes with access services. Though not all replied, it was apparent that a repeat rate of six times was not unusual. This would suggest that the requirement would actually translate into a requirement to provide a total of an hour of new sign-presenting programming per year.
- A4.33 Assuming a repeat rate of six, this would equate to a cost of £60,000 per year for a channel subject to a 30 minute per month target. Based on data and estimates derived from the Access Services Review, this compares to an annual direct costs of sign-interpreting for a channel subject to a 2% signing target of about £19,000. There would be indirect costs in commissioning or acquisition the programming, but these would be offset in whole or part by the elimination of costs for the commissioning or acquisition of sign-interpreted programmes. On that basis, we estimate that the incremental costs for channels in 2008 could be in the region of £41,000 (i.e. £60,000 minus £19,000).
- A4.34 There could also be an additional cost in relation to a requirement to show the programme between 7am and 11pm (i.e. if such a programme was less attractive to audiences that there was a consequent loss in advertising revenue). However, the overall scale of opportunity costs is difficult to estimate. It may be the case that there would be a loss of advertising revenue if audiences for sign-presented programmes were significantly lower than would otherwise be the case. However, not all channels with an audience share of 1% or less sell all the advertising airtime they are entitled to, which would mean that the opportunity cost will vary by channel. This, combined with the 16-hour window per day over a 7-day week, suggests that some broadcasters may be able to schedule sign-presented programming at times when the minimum amount of advertising revenue was at stake.
- A4.35 There would also be an impact on those companies, in-house staff and free-lancers currently providing sign-interpretation for broadcasters. The most immediate impact would be on service providers that focused on sign-interpretation services compared to other companies that provided a broad range of access services to broadcasters.
- A4.36 In the IA that accompanied the consultation document, Ofcom assumed that fifty channels subject to a 2% signing requirement would be exempted. Based on data obtained for the Access Services Review, Ofcom went on to estimate that this could result in about 1,500 fewer hours of sign interpretation of programmes being commissioned each year which would result in a reduction in expenditure of around £960,000. Taking into account comments in response to the consultation, it is possible that that the reduction in expenditure on sign-interpretation could be greater i.e. up £1.2 million.

A4.37 However, responses to the consultation also indicate that companies currently involved in sign-interpretation were interested in getting involved in producing sign-presented programming and that if the proposed change were to be deferred until 2009, then they would be significantly better placed to mitigate the loss of revenue from sign-interpretation. Ofcom therefore considers that the estimate of the financial loss as being in the order of £1.2m represents very much an upper bound and that, taking into account the timing change, the actual impact is likely to be significantly less than this.

Benefits

A4.38 Against a backdrop of on-going obligations on the terrestrial and larger cable and satellite channels, it is clear that groups representing the interests of sign language users would welcome more sign-presented programmes on low audience channels, even at the expense of a significant reduction in sign-interpreted programming on those channels. Indeed, they endorsed this option before Ofcom began a round of discussions with broadcasters (though it is clear that they now have a preference for a sign zone on the Community Channel). However, it is not possible to put a financial value on the perceived benefit to sign language users. The benefit individual users derive will obviously depend on their particular circumstances but where sign-presented programming allows sign-language users to engage more fully with a broader range of television services, the potential benefit could be significant.

A4.39 As indicated in the responses to the consultation, firms currently providing sign-interpreted programming are probably best placed to secure new commissions for sign-presented programming in that it is likely that much of the production would be commissioned externally rather than undertaken in-house and they have a relevant set of skills.

A4.40 Broadcasters argue that the requirement to provide signing, even late at night, imposes opportunity costs on them, so they are likely to see some value in an alternative that allows them to reduce significantly the amount of sign interpreted programmes broadcast in their schedules⁵⁵. This value will also increase over time given that under the Act the obligation to provide signed programmes would rise steadily over time to a quota of 5%. However, the opportunity costs, and the concomitant benefits of reducing them, are likely to vary considerably from one channel to another, depending on the size of their audiences and their viewing patterns.

A4.41 It is important to note that this Option is not revenue neutral relative to the status quo – it is likely to increase the cost to broadcasters. However, the cap of 1% of turnover for overall expenditure on access services remains in place so that this provides a check on broadcasters incurring excessive costs.

Alternative Arrangements

A4.42 In considering whether broadcasters should comply with new regulatory requirements, it is open to Ofcom to take into account of any voluntary arrangements proposed by broadcasters that would also meet the policy objectives it has set out. For the reasons set out in the consultation paper, these arrangements

⁵⁵ See, for example, ITV's response to the access services review (<http://www.ofcom.org.uk/consult/condocs/accessservs/responses/itv.pdf>)

could not be imposed upon broadcasters, and it is not for Ofcom to determine the detail of any such arrangements.

A4.43 Nonetheless, Ofcom is aware that two broadcasters have proposed arrangements under which broadcasters would contribute on a voluntary basis to a Trust that would fund a sign zone on the Community Channel. Given the level of industry interest in this proposal, and the potential it has to meet Ofcom's policy objective, we consider that it would be appropriate to assess its possible impact. Other possible alternatives may emerge, and Ofcom would consider them in the light of the guidance set out in Annex 3 to the Code on Television Access Services (Annex 3 to this Statement).

Costs

A4.44 The assessment of costs depends on assumptions about how much broadcasters would be willing to pay, how much the Trust would expect from subscribing channels, and what size of contribution Ofcom would see as representing an acceptable alternative to the imposition of arrangements under section 303. We consider it reasonable to suppose that broadcasters would be willing to pay something approaching the costs of Option 3 in order to free up their schedules and avoid the indirect costs associated with commissioning and scheduling sign-presented programming. While there is no Trust in place at present, the Community Channel has told Ofcom that a budget of £900,000 would suffice to provide a basic but worthwhile service, and that additional funding would allow more sign-presented programming to be commissioned. Assuming that fifty channels opted to contribute to a sign zone on the Community Channel, this would imply an annual contribution in the order of £18,000.

A4.45 It is likely that Ofcom would consider an annual contribution somewhere between the current assessed direct costs of about £19,000 and the cost of Option 3 (£60,000 for a channel currently required to sign 2% of programming) as being appropriate. However, having regard to the expenditure ceiling of 1% of relevant turnover assumed in the Code on Television Access Services, and the policy objective of avoiding an adverse impact on subtitle users⁵⁶, Ofcom considers that the initial contribution should be at the lower end of this range (i.e. at around £20,000 per channel) from the first anniversary of the relevant date. This level of contribution would be subject to review from time to time.

A4.46 On this basis:

- a) the annual cost to the broadcasting industry of fifty channels participating in the scheme would be £1 million initially, while the incremental cost for each channel would be in the region of £1,000⁵⁷; and
- b) the cost to companies, in-house staff and free-lancers providing sign-interpretation for broadcasters might be expected to be up to £1.2m million (see paragraph A4.37 above). However, given that implementation of any proposals has been deferred until 2009, there is scope for service providers to mitigate this loss and to move to produce sign-presented programming.

⁵⁶ The Code provides that broadcasters that cannot meet the full cost of access service targets by spending 1% of relevant turnover can reduce the amount of subtitling they provide to 66% of the target (Level Two) or 33% (Level 3).

⁵⁷ Given the range of prices currently paid for signing by broadcasters, the actual incremental cost or indeed saving would vary from broadcaster to broadcaster.

Benefits

A4.47 As regards the benefits:

- a) the report of the Sign Language Working Group suggests that sign language users would place a significantly greater value on the provision of a sign zone on the Community Channel as compared with the current arrangements, particularly if the Deaf community was seen as having a rôle in commissioning, acquiring and scheduling programming. However, as set out above, it has not provided possible to put a financial value on the perceived benefit to sign language users;
- b) broadcasters will reap the benefits of eliminating the opportunity costs of scheduling signed programmes; and
- c) the Community Channel and some small producers specialising in the production of signed programmes could be expected to benefit from expenditure by the Trust. The amount that the Trust might have at its disposal is discussed below.

Race impact assessment

A4.48 We are not aware of data on the extent to which people from minority ethnic backgrounds may be over or under-represented amongst sign language users. However, to the extent that people from minority ethnic backgrounds belong to economically-deprived groups that cannot easily afford access to multi-channel television, the requirement for public service channels to continue providing signing as at present will prevent them from being disadvantaged.

A4.49 The options outlined above would not have a bearing on channels aimed at people from minority ethnic backgrounds, as none of these achieve the requisite audience share. For the reasons set out in the race impact assessment contained in the Access Services Review⁵⁸, we consider that extending access service requirements to channels that would not meet the audience share and relevant turnover criteria could reduce overall choice for consumers from an ethnic minority background, as the additional costs could oblige some channels to exit the market.

Ofcom's proposal

A4.50 We consider that our task is to give effect to the policy objective in a manner which is proportionate. This would be achieved in large measure by continuing to apply the 1% expenditure ceiling. Accordingly, the key consideration in assessing the options is which would make the greatest contribution to achieving the other elements of the policy objective, namely an increase in the amount of sign-presented programming which does not result in a cut in the resources for subtitling.

A4.51 Option 3 would achieve this objective, as would the possible alternative arrangements referred to in paragraph A4.43 above. In Ofcom's opinion, both would be proportionate, although the possible alternative arrangements are likely to be perceived as delivering greater benefits to sign language users at a lower cost to broadcasters than the regulatory requirements set out in Option 3. However, for the reasons explained in paragraph 3.29 of the consultation document, it is not open to

⁵⁸ See Annex 6 to the Access Services Review (<http://www.ofcom.org.uk/consult/condocs/accessservs/access.pdf>).

Ofcom to mandate that broadcasters participate in arrangements involving a different channel. Accordingly, Ofcom considers that the regulatory requirements represent the best available option, but that if broadcasters wished to participate in acceptable alternative arrangements, it would be minded not to impose the new regulatory requirements on them.