Media Bill – Impact Assessment Update

The Government has now published the Impact Assessments for the draft Media Bill as published on 29 March 2023. As is usual practice, an updated set will be submitted to the Regulatory Policy Committee for independent scrutiny, and published at Bill Introduction.

Title: Video-on-Demand Accessibility **IA No:** **RPC Reference No:** RPC-DCMS-5152(2) **Lead department or agency:** Department for Culture, Media & Sport **Other departments or agencies:** N/A	**Date**: 29/6/2023
	Stage: Final
	Source of Intervention: Domestic
	Type of Measure: Primary legislation
	Contact for enquiries: enquiries@dcms.gov.uk
	RPC Opinion: Fit for purpose

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	**Business Net Present Value**	**Net Cost to Business per Year**	**Business Impact Target Status** Qualifying provision
NQ	NQ	NQ	

What is the problem under consideration? Why is government action or intervention necessary?

The viewing habits of UK audiences are rapidly changing, with an increasing proportion of people accessing video-on-demand services alongside or instead of linear broadcasting. VoD services provide huge value to UK audiences, and in many cases provide significant, and growing, contributions to the UK economy.

However, VoD services are lagging behind traditional broadcasters in providing access services (subtitles, audio description, and signing) to ensure that their services are accessible for people with sight and/or hearing loss. Without sufficient access services, those with sight and/or hearing loss can feel isolated and unable to participate fully in social and cultural life in the UK. In linear broadcasting, the Government previously legislated to put targets in place for implementation of access services, but similar targets do not yet exist for video-on-demand services. Putting targets and Ofcom regulation in place for video-on-demand services will bring levels and quality of access in line with linear broadcasting, ensuring that provision is consistent across live television and on-demand services.

What are the policy objectives of the action or intervention and the intended effects?

It is the Government's intention to ensure greater consistency in the regulation of traditional broadcasters and TV-like video-on-demand streaming services, to provide a fair competitive framework and ensure UK viewers receive equivalent standards and a similar level of accessibility when viewing television, whether that be live or on-demand. The overall objective is to ensure that video-on-demand services are accessible to people with disabilities affecting their sight and/or hearing. Currently, there are no requirements for access services on VoD services, whilst there are statutory requirements in place for broadcasters. Although there have been improvements in provision in recent years, these are still below the levels seen in linear broadcasting. Reforms will create consistency in the requirement for provision of

access services between broadcasters and TV-like streaming services, and enable those with disabilities to better enjoy and participate in social and cultural life in the UK.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: *Do nothing* Continue to have no targets for accessibility provisions.

Option 1: *(preferred)* Introduce specific targets for video-on-demand services to provide certain levels of access services across their catalogue of content, and introduce reporting requirements.

- Require that video-on-demand services offer subtitling on 80% of their catalogue, audio description on 10%, and signing on 5%.
- Allow for exemptions to fulfilling these targets on the basis of audience benefit, affordability, and technical difficulty.
- Require video-on-demand providers to report annually to the regulator on the extent to which and how they have met the requirements.

A tiered framework will be used to ensure proportionality, with only larger TV-like services falling into Tier 1 being required to meet these access service targets. Option 1 is preferred, as voluntary solutions are unlikely to deliver stronger provisions or a consistent approach, as this is the model that VoD providers are effectively under now. The recommended target levels were set to mirror those for linear broadcasters, ensuring that provision of access services is more consistent for those with disabilities across video-on-demand and linear broadcasting.

Will the policy be reviewed? Policy implementation and outcomes will be reviewed by Ofcom. As an independent regulator, Ofcom will undertake its own comprehensive monitoring and evaluation (subject to parliamentary oversight).

Does implementation go beyond minimum EU requirements?		N/A		
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	**Micro** No	**Small** No	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible : John Whittingdale Date: 23 June 2023

Summary: Analysis & Evidence Policy Option 1 (*Preferred*)

Description: *(preferred)* Introduce specific targets for video-on-demand services to provide certain levels of access services across their catalogue of content, and introduce reporting requirements.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: ⚒	High: ⚒	Best Estimate: ⚒

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	⚒		⚒	⚒
High	⚒		⚒	⚒
Best Estimate	⚒		⚒	⚒

Description and scale of key monetised costs by 'main affected groups'

Businesses will have to familiarise themselves with the legislation, and will have to incur transitional, set up and ongoing costs associated with providing additional accessibility services. All VoD services in scope of Tier 1 regulation will have to undergo the costs. The transitional costs associated with developing the technology to provide access services are estimated to be £⚒ per provider, and familiarisation costs are estimated to be £43,000 in total. Ofcom will also incur set-up costs. Ongoing costs include the cost of ensuring existing content has accessibility features, and the cost of ensuring new content has accessibility features. These are estimated to be £⚒ total over the first four years, and £⚒ per year, respectively. However, total costs depend on how many businesses come into scope of Tier 1 - this is yet to be determined, and these costs are likely to overestimate the total cost to business. All figures are illustrative estimates of a maximum impact to provide an indication of the scale of impact, until a decision is made about which platforms are in Tier 1. There are also costs to Ofcom of monitoring and enforcement.

Other key non-monetised costs by 'main affected groups'

The main non-monetised cost is the cost to businesses of annual reporting to Ofcom. These are difficult to estimate as On-demand programme service (ODPS) providers are already obliged to report on their access service provision. Ofcom have verified that these costs are assumed to be minor and so have not been monetised. The other non-monetised cost is the risk of a fall in available content; however, we believe that this risk is unlikely to materialise.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		0.6	4.9
High	0		3.5	28.6
Best Estimate	0		1.8	15.0

Description and scale of key monetised benefits by 'main affected groups'

Consumers will benefit from increased consumer choice as a result of accessibility services being available on a wider range of content. These benefits will be enjoyed by the share of the population who have hearing and/or visual impairments. The estimated average annual benefit to consumers from year four onwards (when the targets will be enforced) is £2,015,000. This is based on consumers' willingness to pay for a single VoD service, so it is likely to be an underestimate. All figures are illustrative until a decision is made about which platforms are in Tier 1.

Other key non-monetised benefits by 'main affected groups'

All non-monetised benefits are indirect benefits. Increased provision of accessibility services will mean that hearing and/or visually impaired audiences are able to consume more content, and so will feel less socially isolated. This could have an impact on health spending by reducing the cost to the UK of depression. Additional benefits come from the use of accessibility features by audiences who do not have hearing and/or visual impairments, such as individuals who use them to learn English (or a foreign language). It is also possible that businesses could benefit from increased revenue as consumers are more willing to pay for a subscription. However, it is unknown whether the increase in revenue would outweigh the cost of providing additional accessibility services. Given that businesses are not currently providing access services at the proposed levels, we assume that the cost to business outweighs the benefit.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5

There is an assumption on the proportion of currently inaccessible hours that are provided by VoD providers with a broadcast service compared to online-only providers. This impacts the total number of hours that will be repurposed from broadcast content, which has a lower cost to business, and could mean that our estimates for the costs of ensuring both existing content and new content have accessibility services are inaccurate. It is not clear whether this would be an over-or under-estimate. We have undertaken sensitivity analysis on the proportion of content from providers who have broadcast services in our assessment of costs, with higher and lower estimates.

It is also assumed that each provider will have to undergo the cost of setting up accessibility features on one app-based platform and one bespoke solution platform. This could be an underestimate if providers choose to operate across multiple platforms. It is also subject to change based on how Ofcom's recommendation to enforce requirements flexibly is interpreted, meaning costs to services could be lower than expected. To account for this uncertainty, we have undertaken sensitivity analysis where costs could be 20% lower or higher, to show an indicative range.

The main assumption in the benefits assessment is that VoD viewing habits are comparable to linear TV viewing habits. As VoD gives viewers freedom to watch what they want, it is possible that benefits could be underestimated. There is also an assumption on the proportion of content from non-exempt firms - this is uncertain, as we do not know which businesses will come into Tier 1.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs:	**Benefits:** 0	**Net:**	

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1.0 Policy Rationale

Policy background

1. Video-on-demand services provide huge value to UK audiences, and in many cases make significant and growing contributions to the UK economy. Thousands of hours of on-demand programmes are now available at the touch of a button - but not enough of these programmes are easily accessible to those with sight or hearing loss. We estimate that there are approximately 5.8 million people in the UK with hearing impairments who may use subtitles, and a further 930,000 with visual impairments.[1] There are also 87,000 people in the UK who use sign language as a first language. Organisations like the Royal National Institute of Blind People and the Royal National Institute for Deaf People say that lack of access to content on VoD services can make people who are living with sight or hearing loss feel left behind.

2. The Government supports a digitally inclusive society, in which television content should be accessible for all UK audiences, regardless of the platform chosen to watch or listen to it. This commitment was set out in the 2022 white paper *'Up next - the government's vision for the broadcasting sector'*.[2] Whilst access targets already exist on linear television channels, this is not the same for VoD. Viewing habits have changed significantly in recent years, with more than three quarters of households now using video-on-demand services; it is now essential that these services provide appropriate accessibility.

3. Whilst it is true that accessibility on video-on-demand services for UK audiences is slowly improving, it is inconsistent across services and progress could be faster. That is why the Government is introducing accessibility requirements for the largest TV-like VoD services through the Media Bill. This will ensure that the largest VoD services that provide TV-like content will deliver appropriate accessibility to UK audiences, and if they do not then they will be rightly accountable to Ofcom, the independent media regulator.

4. This will go alongside wider changes to regulation being introduced through the Media Bill, and set out in a separate IA, to bring video-on-demand regulation more in line with linear television. These wider changes will mean UK audiences will also be better protected from harmful material and be better able to complain to Ofcom if they are concerned with something they have seen or heard.

<u>VoD accessibility requirements being introduced through the Media Bill</u>

5. The Media Bill will introduce, for the first time, basic access requirements for TV-like VoD services that are identified for new enhanced content regulation. Instead of setting complicated metrics in legislation (based on turnover, audience numbers etc) which could mean that some VoD services fall in and out of regulation on a yearly basis, it is proposed that accessibility requirements are tied to the new enhanced (Tier 1) VoD regulations already being implemented in the Media Bill. These will also mirror current television access requirements which are that:

[1] These estimates differ from the figures used publicly by other organisations like the RNID and the RNIB, as they were calculated specifically for the purposes of this impact assessment to estimate how many people could benefit from additional subtitles, audio description and signing provisions, rather than estimating how many people there are in the UK with sight and hearing loss overall. Our figures are based on the same sources used by the RNID and RNIB. Detail of how these figures are calculated can be found in the section on monetised benefits.

[2] Up next - the government's vision for the broadcasting sector , April 2022

- 80% of content is subtitled;
- 10% of content is audio-described; and
- 5% of content is signed.

6. These requirements will need to be fulfilled by applicable VoD services within a four-year period, with interim two-year targets set at half of the full target level to ensure progressive delivery.

7. Importantly, flexibility will also be given to Ofcom to exempt or reduce requirements in the case of excessive cost or technical barriers (as they already have for broadcasting). For example, Ofcom's final report set out that VoD providers could be in scope of the regulation if their accessibility costs are within a budget of 1% of the company's overall turnover. Therefore reduced requirements can be put in place for those services that cannot afford to implement the full requirements. Other exemptions could include factors such as significant technical difficulties in providing access services, or low audience share.

8. Annual reporting would also be required from VoD services to outline how they have met the requirements, plans to continuously and progressively make their services more accessible, and measures taken to ensure access services are of sufficient quality.

9. The level of these target requirements and the framework for their implementation are based on two statements by Ofcom, published in response to two consultations conducted in 2018 and 2021. These consultations were designed and conducted by Ofcom to inform the Government's design of video-on-demand accessibility requirements. Ofcom's consultations involved key industry stakeholders, including groups representing consumers, groups representing industry, video-on-demand providers, and providers of access services.

Problem under consideration and rationale for intervention

10. As set out above, viewing habits are rapidly changing in the UK, with an increasing proportion of people accessing video-on-demand services alongside or instead of linear broadcasting. From Q2 2018 to Q2 2022, the household reach of subscription video-on-demand (SVoD) services has increased from 40.9% to 67.1%. However, VoD services are lagging behind traditional broadcasters in providing access services (subtitles, audio description, and signing) to ensure that their services are accessible for people with sight and/or hearing loss. Sufficient provision of these access services of an appropriate quality, by both broadcasters and video-on-demand services, is not naturally provided by the market and market failure correction is therefore needed to ensure that access services are in place for those that need them.

11. Under market equilibrium, the market is not incentivised to provide appropriate access services, and so they are under-provided. This is because providing access services increases costs to providers but does not significantly increase revenue. Video-on-demand services could realistically charge extra for the provision of access services, however the industry standard is free, so it would be presentationally unacceptable for any firm to do so. Furthermore, VoD services primarily differentiate on the basis of their content. This means that a service would at best get a marginal benefit from offering better accessibility provisions over another service, as if they don't have the content that the audience wants, it does not matter how accessible it is. Therefore, underprovision is a rational response to these underlying incentives.

12. However, there is an equity argument. Everyone in society should have access to VoD content, provided they pay for the service, but currently, market outcomes lead to suboptimal provision of accessible content for audiences with sight and/or hearing loss. We can see evidence of this lack of market provision particularly in the provision of signing but also a significant proportion of VoD services providing no accessibility features. Through responses to Ofcom's consultation, consumer groups highlighted the increasing importance of making VoD content accessible: catch-up services have become an 'integral' part of broadcast services with more content being delivered primarily online. There has also been increased uptake of on-demand services among older viewers, who are more likely to have sight and/or hearing impairment and be more isolated. Without sufficient and good quality access services, those with sight and/or hearing loss can feel isolated and unable to participate fully in social and cultural life in the UK. This market failure can also lead to negative externalities, as this isolation can affect their opportunities and mental health. People with disabilities should not feel left behind due to lack of accessibility on VoD services and television content should be accessible for all UK audiences, regardless of the platform they choose to watch or listen to it. There is a role for the Government in ensuring more equitable access to audiovisual content. Bringing VoD requirements in line with linear broadcasting requirements can help to achieve this.

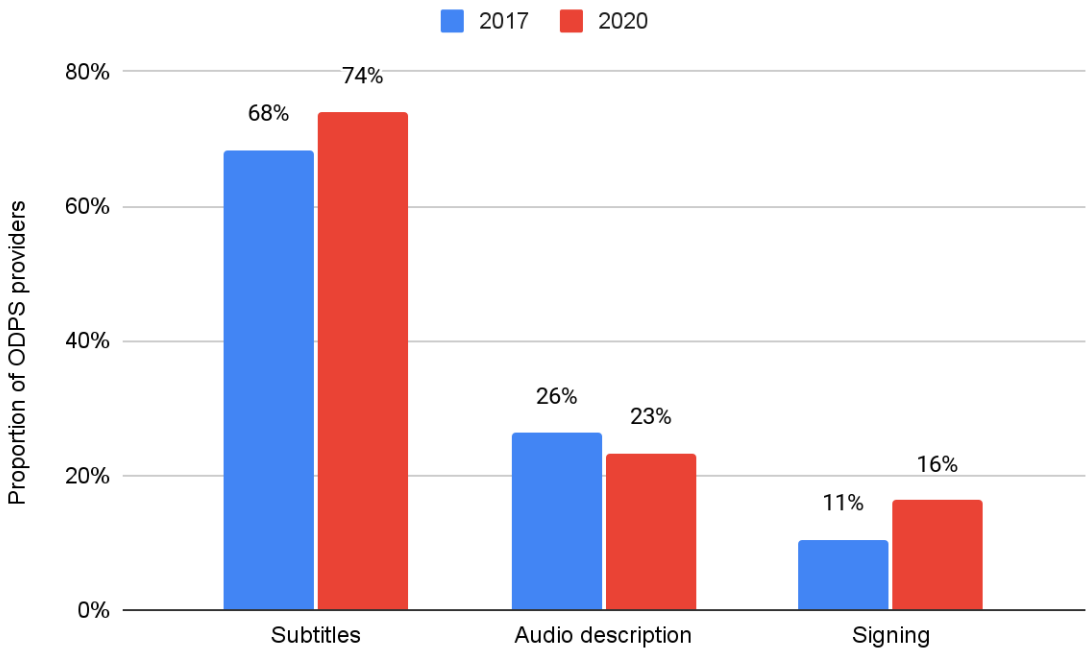
13. In linear broadcasting, the Government previously legislated to put in place targets and Ofcom regulation for the implementation of access services to ensure the provision of these vital services. However, targets do not yet exist for video-on-demand services. Whilst accessibility on video-on-demand services for UK audiences is slowly improving, this is inconsistent across services and progress could be faster. There is also no regulatory oversight to ensure access services are of an appropriate quality. Ofcom's first consultation response on video-on-demand accessibility reflected on the success of the legislative broadcasting access service requirements. Since introduction in 2004, there has been a significant improvement in accessibility on linear broadcasting channels. Ofcom found that in 2018 84 UK channels were required to provide access services, accounting for over 90% of broadcast television viewing in the UK. By contrast, Ofcom's report reflected that in 2018 45% of video-on-demand providers did not make any access services available.

14. In their second consultation response on this issue, Ofcom[3] reported that, in the absence of regulations requiring on-demand accessibility, there were at best modest improvements over the four years to 2021:

    a) *Proportion of On-Demand Programme Service (ODPS) providers offering access services:* Since 2017, the proportion of ODPS providers offering any access services on their services in the UK has increased, but only by a small amount (74.2% of given providers in 2020 compared with 71% in 2017). This increase is largely accounted for by increases in subtitling (up from 68.4% to 74% of providers) and signing (up from 10.5% to 16.3% of providers). The proportion of these providers offering audio description has gone down (from 26.3% in 2017 to 23.3% in 2020). See Figure 1 below.

Figure 1: Proportion of ODPS providers offering access services, 2017-2020.

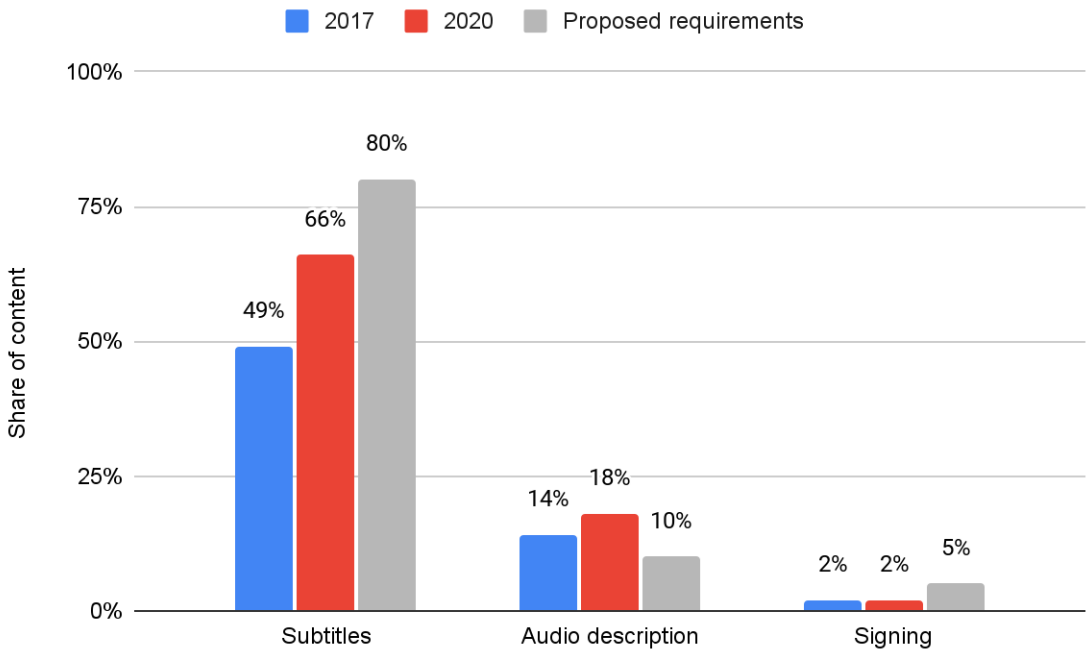
[3] Further Statement: Making on-demand Services Accessible, Ofcom, 2021



Source: Further Statement: Making on-demand Services Accessible, Ofcom, 2021

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

Figure 2: Proportion of content which is made accessible, 2017-2020.



Note: The proposed requirements are equivalent to those for linear broadcasting.
Source: Further Statement: Making on-demand Services Accessible, Ofcom, 2021

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

15. These findings reflect that although provision is slowly improving, external intervention is needed to encourage providers within the market to increase their focus on access services. In particular, whilst providers have improved their offering for subtitles and audio description, there have been no improvements in provision of signed content. Given the improvements in subtitles and audio description, the fact that no progress has been made on signing means it is likely that provision of sign language services will not improve absent legislation. In fact, provision of signed content has fallen to 1% in some of the years between 2017-2021, showing that even with new content, maintaining the current level of accessibility is not guaranteed, let alone improvements in accessibility. 87,000 people in the UK use sign language as a first language. It is a distinct language, and so subtitles do not fully meet the needs of all the people who use sign language. Bringing requirements for VoD services in line with linear broadcast requirements will ensure that this group has equal provision of signed audiovisual content regardless of how they choose to watch, and provides a backstop to mitigate against the risk of reductions in accessibility or quality of provision.

16. Similarly, introducing requirements across subtitles, audio description and signing means that provisions are improved for audiences who are hearing and/or visually impaired and audiences who use sign language as a first language. This will make provision of audiovisual content more equitable for people with these disabilities. Furthermore, although on aggregate it appears that businesses have made improvements in access services, improvements have been modest, and provision is inconsistent across services. Ofcom data from its 2020 access services report shows that some services provide a high level of provision, others are lagging behind. This is particularly apparent in provision of audio description and signing, with only 7 providers, out of a total of 70 providers reported, achieving more than 1% of content signed on any given platform. Similarly, only 8 providers achieved more than 10% of content audio described on any given platform. For comparison, 15 providers achieved 100% of content subtitled on any given platform, and a further 11 providers achieved over 80% of content subtitled.[4] The fact that this data shows provision on any given platform further emphasises the inconsistency of provision - if the highest provision across all platforms that a provider supplies its service on is 1%, then there are a number of platforms with lower provision. For audio description and signing, in most cases this is a long tail of platforms with zero provision for certain services. Even for providers that have access services, they do not provide access services for their on-demand content on many platforms, suggesting that provision may be more likely to be increased on platforms with existing access services. This could lead to greater disparity in provision over time. This intervention will ensure greater uniformity in provision of access services across platforms.

17. The level of accessibility is not guaranteed to remain at the current level - as seen by the number of businesses providing audio description declining from 2017 to 2021, and the proportion of content that is signed remaining broadly constant over the period. Recent

[4] Data taken from Ofcom's interactive access services report, 2020

discussions with Ofcom have reflected that they still consider regulation to be necessary to encourage sufficient provision and quality of access services, and this feeling is also strongly felt by consumer representative bodies like the RNIB and RNID. Therefore, intervention is necessary to ensure that these businesses provide access services at a level equivalent to linear broadcasting requirements.

18. An intention to legislate on this issue provided in the Digital Economy Act 2017 means that industry and consumer rights groups are expecting a legislative framework to be implemented that will align with broadcasting requirements. It is likely that this is the reason why there have been improvements in provision over the past few years: businesses have been increasing provision in anticipation of requirements, as it is less costly to adjust over a longer period. Given this expectation, it is anticipated that a non-legislative approach would now be ineffective in encouraging further access service provision. Furthermore, there is a risk that without this regulation, providers would reduce their provision of these access services, both on making existing content accessible but likely also on new content.

19. Putting in place specific targets requiring video-on-demand services to provide a certain level of appropriate access services will address the market failure of underprovision, ensure a level of quality, make access to television-like content more equitable, and bring levels of access services in line with linear broadcasting. Furthermore, this regulation acts as a backstop, mitigating against the risk of a decrease in provision or reduction in quality in the future.

Policy objective

20. The overall objective of this policy is to enable people with disabilities affecting their sight and/or hearing to better enjoy and participate in social and cultural life in the UK, through more equitable access to television-like content. Provision of access services by VoD providers are below the levels seen in linear broadcasting, meaning that individuals with sight and/or hearing impairments are missing out, and video-on-demand services cannot be enjoyed by the widest possible audience. While there are statutory requirements and regulatory oversight in place for access services (subtitles, audio description, and signing) for broadcasters, there are currently no equivalent requirements or regulation for access services on VoD services. This legislation aims to bring VoD access service requirements in line with those for linear broadcasters, ensuring that television content is appropriately accessible for all UK audiences, regardless of the platform they choose to watch or listen to it on.

21. This legislation is also part of the wider Government aim to bring VoD regulation more in line with broadcasting regulation, where appropriate. Reforms aim to create consistency in the requirement for certain levels of provision of access services between broadcasters and TV-like streaming services, therefore ensuring that UK audiences receive a similar level of accessibility no matter how they watch television, whether it be live or on demand.

Description of options considered

22. As part of the development of this policy, the Secretary of State requested that Ofcom consult on those likely to be affected by access service requirements. Ofcom conducted an initial consultation in 2018, and was asked by the Secretary of State to follow up on this to provide further detail on some of the key parameters of the scheme to understand how it could operate in practice. Ofcom's second consultation response was published in July 2021.

23. These consultations were designed and conducted by Ofcom specifically to inform the Government's design of video-on-demand accessibility requirements. Ofcom's consultations involved key industry stakeholders, including groups representing consumers, groups representing industry, video-on-demand providers, and providers of access services. The first consultation received 30 responses in total, and the second consultation received 19 responses. Ofcom set out in their consultation responses that in making recommendations they also drew on a variety of other sources, including;
    - data collected from VoD services on the accessibility of their services and obstacles to providing access services;
    - experience in relation to the statutory requirements for broadcast accessibility, including enforcing the code on television access services; and
    - complaints received from consumers.

    These consultations were used by Ofcom to make recommendations on the requirements, scope and implementation. Ofcom also highlighted that in making their recommendations, they took into account the specific effectiveness and audience benefits of any particular intervention.

24. Ofcom's consultations considered a variety of areas in assessing whether and how best to deliver and implement the policy objectives for video-on-demand accessibility. These included:
    - Whether and at what level the targets for subtitles, audio description, and signing should be set.
    - Which services the regulations should cover, and whether/how service providers should be given exemptions to these requirements.
    - Whether and how reporting requirements should be implemented for video-on-demand services.
    - How requirements should be implemented based on a services' provision across different platforms.

25. The main areas for consideration within these consultations were the specific requirements of the regulation, the scope of regulation and the implementation of regulation.

26. Requirements: Ofcom found that given the slow progress in video-on-demand accessibility, targets are required to ensure measurable progress in expanding the amount of accessible content on video-on-demand services. Ofcom's consultations recommended that the target levels for access services should be set at 80% of a catalogue for subtitling, 10% for audio description, and 5% for signing. This was based on assessment of the estimated costs of implementation, and consideration that at least the same proportion of content that is accessible on broadcast television should be made accessible on-demand. These recommended target levels were therefore set to mirror those set out for linear broadcasters, as lower targets would result in discrepancy in accessibility for viewers across different TV-like services.

27. Based on their consultation, Ofcom also recommended that providers should be required to meet these requirements within four years, with an interim target of two years. These recommended timeframes are lower than is currently in place for broadcasting. Ofcom considered this but suggested that there have been significant developments in infrastructure and workforce since the broadcast access regime came into force in 2003 and that the requirements for video-on-demand should therefore be on a shorter timescale. It was also suggested that in order for this system of regulation to work in practice, Ofcom would need

regular comprehensive reporting from on-demand providers. It was recommended that providers be required to report annually to Ofcom on the extent to which and how they have met the requirements.

28. Scope: Ofcom's consultations considered whether all video-on-demand services should be captured within the requirements to provide access services. For instance, there was consideration as to whether factors such as audience benefit, the type of service/content, affordability, and technical difficulty should impact on whether requirements are in place for providers. Based on their consultation, Ofcom found that in order to ensure that regulation is proportionate for providers, these factors should be taken into consideration. It was determined that providers should be exempt from requirements where they have been prevented from meeting them due to significant or operational obstacles, to be judged on a case-by-case basis. It was recommended that exemptions should also be made on the grounds of low audience size/benefit and where it would involve a disproportionate cost (of more than 1% of a provider's overall turnover). Ofcom recommended that this system of exemptions should be put in place and will ensure that the requirements are proportionate for service providers.

29. Implementation: Ofcom considered two options for the application of targets across multiple platforms. This included 'Option 1 - The Flexible Approach', where providers can meet targets in a flexible way across their non-excluded platforms, or 'Option 2 - The Prescriptive Approach', where access services should be distributed equally among all non-excluded platforms. In their second consultation, Ofcom recommended that the flexible approach would allow platforms to prioritise content based on audience benefit. Ofcom also recommended that providers should be required to report yearly on their progress in achieving targets, as well as once every two years on costs to ensure that Ofcom have the necessary information to assess exemptions. Without these requirements, the implementation of the targets and requirements would not be practical.

30. As set out above, various options for delivering this policy objective have been considered, but the shortlist of the preferred option aligns with Ofcom's final recommendations on how to proportionately and consistently implement access service requirements.

31. **Option 0:** *Do Nothing* Continue to have no targets for accessibility provisions.
    - Do not bring in targets for the provision of subtitles, audio description, and signing on video-on-demand services.
    - Do not require providers of on-demand services to report annually on the accessibility of their services.
    - Do not bring video-on-demand services' provision of access services in line with broadcasting regulation.

32. There are currently no specific targets for video-on-demand services for the provision of access services, and this would continue under the 'do nothing' option. This will mean continued inconsistency in the provision of access services for those with disabilities across video-on-demand and linear broadcasting, and that services cannot be enjoyed equally by the widest possible audience.

33. **Option 1:** *(preferred)* Introduce specific targets for video-on-demand services to provide certain levels of access services across their catalogue of content, and introduce reporting requirements.

- Require that video-on-demand services offer subtitling on 80% of their catalogue, audio description on 10%, and signing on 5%.
- Allow for exemptions to fulfilling these targets on the basis of audience benefit, affordability, and technical difficulty.
- Require video-on-demand providers to report annually to the regulator on the extent to which and how they have met the requirements.

34. *Evidence of consideration of alternatives to regulation:* We have considered whether the intended outcomes are deliverable through self-regulatory models through engagement with stakeholders. However, our and Ofcom's view is that voluntary solutions are unlikely to deliver stronger provision or a consistent approach, as this is the model they are effectively under now. This is unacceptable in the context of changing audience viewing trends towards video-on-demand and the current imbalance in regulation for broadcast versus VoD content.

Summary and preferred option with description of implementation plan

35. The preferred option has the following aims:
    - To introduce targets for the delivery of access services (i.e. subtitling, audio description, and signing) on video-on-demand services.
    - To bring the regulation of video-on-demand access services in line with linear broadcasting.
    - To deliver a balanced and proportionate response by ensuring that services can be granted exemptions based on their ability to deliver.

36. Primary legislation will be used to mirror the existing broadcasting legislation on access services and set out overall targets for the delivery of subtitles, audio description, and signing on video-on-demand services. The target levels for access services will be set at 80% of a catalogue for subtitling, 10% for audio description, and 5% for signing. Powers will be delegated to Ofcom to draft and enforce a Code of Guidance to set out how providers can meet these targets and a framework for exemptions from requirements to ensure proportionality. This is necessary as not all types of content and systems may be appropriate (or as easily adaptable) for all access services. Delegating these powers to Ofcom will ensure sufficient flexibility in the implementation of the policy to allow for potential future changes to the market (e.g. technological improvements making it easier to provide access services) and to make necessary adjustments to their Code of Guidance based on this. Providers will not be required to meet targets until after Ofcom has consulted and published the Code.

37. The access service requirements will be linked to wider changes to the video-on-demand regulatory framework, where enhanced regulation is being introduced for larger, TV-like services that will be designated as 'Tier 1'. The public service broadcasters' video-on-demand services, as well as any other providers designated as Tier 1 by the Secretary of State via secondary legislation, will be required to meet these access service targets. The decision on which services will be included will be made after the legislation has received Royal Assent and Ofcom have reviewed the VoD market.

38. A Code on the implementation of access services for providers will need to be developed by Ofcom as part of the delivery of this option. From legislation commencement it is estimated that it would take 6 months for Ofcom to consult and develop their Code of Guidance, and assess exemptions for providers. Ofcom then recommends that providers are given a six month notice period from the point of the publication of the Code and exemption details. The timeframe for

meeting targets could therefore come into effect a year after the legislation receives Royal Assent.

39. Ofcom will be responsible for the ongoing operation and enforcement of the requirements. This will include assessing any exemptions from requirements based on factors such as affordability and technical feasibility. Ofcom will also be responsible for monitoring providers' delivery against the requirements and will review reporting provided yearly by providers on the meeting of the requirements.

2.0 Costs and Benefits

Monetised and non-monetised costs and benefits of each option

Option 0: *Do nothing* Continue to have no targets for accessibility provisions.

Option 1: *(preferred)* Introduce specific targets for video-on-demand services to provide certain levels of access services across their catalogue of content, and introduce reporting requirements.

40. Full descriptions of the options are included in section 1. This section also includes detail of the measures underpinning Option 1, which are designed to ensure proportionality, therefore minimising the impact on business, including smaller businesses such as niche VoD providers.

41. All costs presented in the main body of this document are in 2022 prices. These have been converted to 2020 prices for the EANDCB and NPSV, as is standard.

Who is impacted?

VoD services:

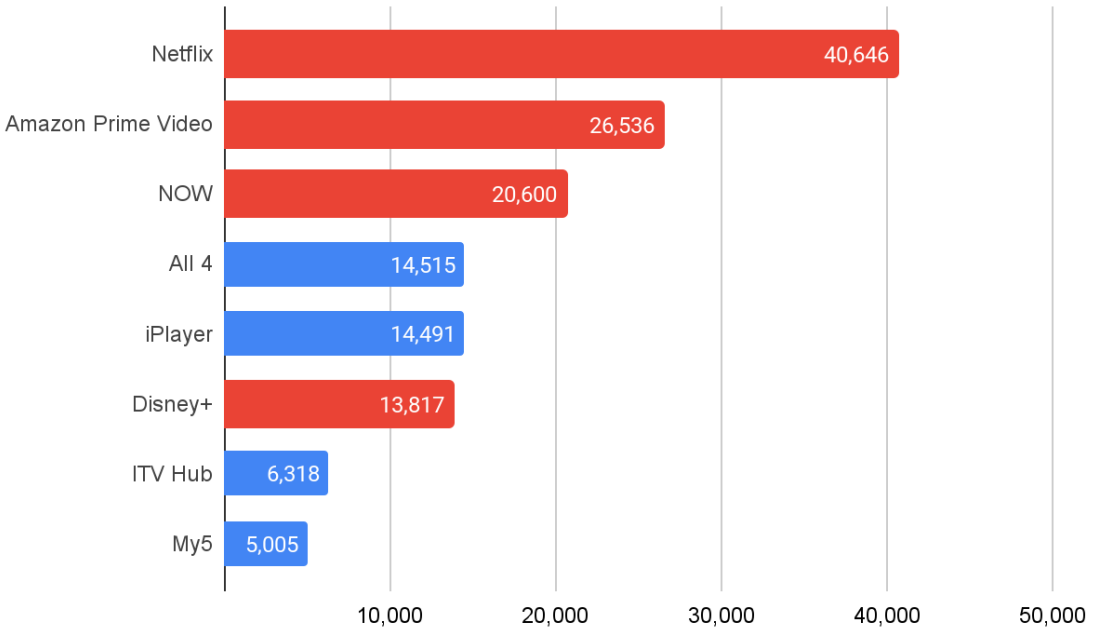
42. There are currently 125 notified ODPS providers currently regulated by Ofcom.[5] At this time, there is no way to accurately measure the majority of VoD services across the rest of the world or which audiences they target.

43. Broadcast video-on-demand (BVoD) services operated by PSBs are a key group, comprising BBC iPlayer, ITV Hub, Clic (S4C), All4 (Channel 4), My5 (Channel 5), STV Player (STV). Channel 4's All 4 has the largest volume of content of all the PSB BVoD services – 14,515 hours in April 2022, compared to BBC iPlayer's 14,491 hours. ITV Hub (6,318 hours) and My5 (5,005 hours) have less depth of programming available on-demand.[6] Taken together, all four TV broadcasters' free-to-view on-demand assets total 40,329 hours – narrowly below the respective catalogues of Netflix and Amazon Prime Video (see Figure 3).

44. Of key subscription VoD services not currently regulated in the UK, Apple and Netflix stand out as the largest services that directly target UK audiences. Broadcasters Audience Research Board (BARB) data on the number of UK households subscribing to different subscription VoD services in Q2 2022 finds that there are 17.1m Netflix households, 12.8m Amazon Prime Video households, 6.6m Disney+ households, 2.1m NOW TV households and 1.6m Apple TV+ households.[7] In terms of library size, Netflix has 41,000 hours of content, Amazon Prime Video has 27,000 hours, NOW TV has 21,000 hours, Disney+ has 14,000, and Apple TV+ has 600 hours of content available to UK users.[8] This is shown in Figure 1, where the four largest VoD services are shown in red, and the four largest Broadcast VoD services are shown in blue.

Figure 3: Total Content Hours Available by Service, April 2022.

[5] Ofcom, List of on-demand programme service (ODPS) providers currently regulated by Ofcom, October 2022
[6] Ofcom, Media Nations 2022
[7] BARB releases Establishment Survey data for Q2 2022
[8] Ofcom, Media Nations 2022



Note: Blue bars are BVoDs, red bars are SVoDs.
Source: Ofcom, Media Nations 2022

45. The costs and benefits detailed below will apply to only the largest VoD providers that will be designated as Tier 1. At this time, it is not known exactly how many services will fall into Tier 1 as this will be determined by the Secretary of State following a review from Ofcom. For context, Ofcom identifies 26 services with >£50m annual revenues, and 9 services with between £10m & £50m revenues. We therefore estimate that these costs and benefits will apply to 35 service providers.

46. The main costs will be to VoD service providers who must comply with the new code set out by Ofcom. This will amount to development costs, running costs and potentially monitoring and reporting costs, along with relatively small familiarisation costs. There is also a potential benefit to VoD providers as they may experience an increase in subscriptions and/or advertising revenue as a result of growing demand for their services.

47. The costs of fulfilling the access service requirements will sit with VoD service providers rather than with content producers. The requirements are linked to the level of accessibility of a VoD service's catalogue of content, and the responsibility for meeting the target levels therefore will lie with the VoD service itself. The provision of access services is an aspect of the delivery of content to audiences, which is the function of the VoD service itself, rather than of the content producers which focus on the creation of the content. The provision of access services is not part of the development or delivery of programme production and is therefore rightly treated as a separate issue by both VoD services and producers. Moreover, the takeup of accessibility costs by broadcasters rather than content producers has not been an issue in the implementation of accessibility requirements for linear broadcasting.

Consumers

48. There are expected to be welfare benefits to consumers with hearing and/or visual impairments. These are obtained through an increase in consumer choice, and subsequently, social inclusion and wellbeing. Consumers without such impairments will also enjoy a broader

content experience, such as those who intend to use subtitles to learn a new language, or consumers who multitask when watching content.

49. Consumers are not expected to incur any direct costs as a result of the regulation, unless higher costs for VoD services are passed on to consumers. However, this is unlikely, as the VoD market is highly competitive and costs are small to these providers.[9]

Ofcom

50. Ofcom will incur both set-up costs and operational costs as a result of the VoD accessibility regulations. As Ofcom's regulatory duties are still to be determined its regulatory costs are uncertain. Therefore, these costs have not been included in this impact assessment. All costs, benefits and impact estimates have been reviewed by the RPC in their independent scrutiny.

51. A full summary of the costs and benefits of the intervention option can be found at the beginning of the analysis for that option. The table below summarises the cost benefit framework that has been used for this analysis.

Table 1: Cost Benefit Framework
Direct impacts on business are marked with an asterisk (*).

	Costs	**Benefits**
Businesses	Familiarisation costs* Development (transition and set-up) costs* Annual cost of ensuring existing content is accessible* Annual cost of ensuring new content is accessible* Annual reporting costs*	Increase in subscription and/or advertising revenue
Consumers	Risk of fall in available content or additional costs to consumers	Increased consumer choice Decreased social exclusion Other wellbeing benefits
Public sector	Monitoring and enforcement costs for Ofcom	Fall in health spending

Rationale and evidence to justify the level of analysis used in the IA

52. This Impact Assessment aligns with Scenario 2 in the RPC's guidance on primary legislation, in line with the approach taken for assessing the impact of the Media Bill.[10] DCMS has provided an indication of the likely scale of impacts, but is unable to provide a robust assessment for validation due to the fact that some of the details of the policy will be set out by Ofcom following legislation, and as a result of the uncertainty around timelines for compliance. This assessment includes a number of indicative estimates of costs and benefits, based on information from

[9] Ofcom's recommendations include that providers should not be obliged to provide access services when it would involve
disproportionate cost, for these purposes meaning costs of more than 1% of a provider's overall turnover.
[10] RPC case histories – primary legislation IAs, August 2019

Ofcom, however there is a high degree of uncertainty in these estimates, so a qualitative assessment is also provided.

53. There is too much uncertainty over the impacts of the proposal to provide a meaningful EANDCB (Equivalent Annual Direct Net Cost to Business) figure for validation at this stage. This uncertainty is largely due to the fact that many details of the policy are to be set, or advised on, by Ofcom at a future date. This detail includes providing the Secretary of State with evidence to support the Secretary of State's decision on which services will fall into Tier 1 and be in scope of the enhanced regulation, what exactly will be set out in the new VoD code, and how Ofcom will use their obligation to assess audience protection measures. While it is not possible at this stage to provide a fully monetised appraisal of the policy or a verifiable assessment of the EANDCB, every effort is made to provide an indication of the likely scale of impact of the whole policy through presenting illustrative monetised costs, and comprehensive qualitative analysis.

54. It has also been difficult to estimate the additionality from this legislation, for a number of reasons. Firstly, as detailed in the counterfactual analysis, we cannot disentangle market trends from impacts that may have arisen in preparation for regulation. Whilst businesses have increased their provision of subtitles and audio description since 2017, there was a commitment made to legislate in the same year, so these improvements may be a result of businesses anticipating regulation. Furthermore, it is difficult to forecast existing trends in provision: we do not know whether businesses would choose to increase provision absent legislation, and we may already be at the optimal market allocation. Therefore, we have provided illustrative estimates, but these represent a maximum impact on the basis of a *status quo* counterfactual to provide an indication of the scale of impact.

55. While timelines are dependent on external factors, for appraisal purposes, this IA uses a ten-year appraisal period running from 2023. Familiarisation costs are assumed to be incurred in the first year of the appraisal period with full compliance from 2024. We also reflect Ofcom's four year timeline by assuming all set-up costs will be incurred within the first four years of the appraisal period, and costs for ensuring existing content meets the requirements are also incurred within the four year window. Finally, benefits will not be fully enjoyed until the targets are met after four years, so we therefore apply these benefits from then onwards. All impacts presented in the main body of this document are in 2022 prices. These have been converted to 2020 prices for the EANDCB and NPSV, as is standard.

Option 0 – Counterfactual/Do Nothing

Continue to have no targets for accessibility provisions:

- Do not bring in targets for the provision of subtitles, audio description, and signing on video-on-demand services.
- Do not require providers of on-demand services to report annually on the accessibility of their services.
- Do not bring video-on-demand services' provision of access services in line with broadcasting regulation.

How VoD services are currently regulated

56. There are currently no specific targets for video-on-demand services for the provision of access services, and this would continue under the 'do nothing' option. In comparison, in linear

broadcasting the Government previously legislated to put in place targets for the implementation of access services to ensure the provision of these vital services. For most digital channels with larger audiences, the Communications Act 2003 Act says that 80% of their linear TV programmes have to have subtitles, and 5% of their programmes have to have signed interpretation. Quotas for the main channels are generally higher.

57. The recommended target levels were therefore set to mirror those for linear broadcasters, as lower targets would result in discrepancy in accessibility for viewers across different TV-like services. Not intervening would mean continued inconsistency in the provision of access services for those with disabilities across video-on-demand and linear broadcasting, and that services cannot be enjoyed equally by the widest possible audience.

58. The following narrative describes a counterfactual scenario where no targets are put in place, along with a description of the expected costs and benefits arising from this scenario. There are no monetisable costs and benefits of the 'do nothing' option. Instead, we set out the current levels of accessible features that VoD providers have, along with an assessment of how provision of these features has changed and how we believe it is likely to change regardless of any intervention. These are the values against which the costs and benefits of the intervention option will be compared.

Costs and Benefits

Current state of accessibility service provision

59. As summarised earlier, Ofcom[11] report that in the absence of regulations requiring on-demand accessibility, there has been at best modest improvements over the last four years. Since 2017, the proportion of ODPS providers offering any access services on their services in the UK has increased, but only by a small amount (74.2% of given providers in 2020 compared with 71% in 2017).

60. The latest data from 2021 shows that where ODPS providers have offered access services, there have been improvements particularly in subtitling and audio description. Looking only at services where access services were offered, 66.1% of content was subtitled in 2021 up from 49% in 2017, and audio description is up from 14% to 17.2%. But the amount of signed content has remained at around 2%, dipping to 1% in intervening years.

Impact of 'do nothing' on accessibility provision

61. Although improvements have been modest, the proportion of content which is made accessible is not far off the proposed targets, and providers are heading in the right direction regardless of intervention. Assuming that these trends between 2017 and 2021 continue in a linear fashion into the future, 80% of content will already be subtitled by 2023[12]. Audio description levels are already higher than the target, and are projected to increase further.

62. This legislation acts as future-proofing these levels of provision against the risk that businesses may reduce provision or quality of service in the future. Given that businesses increased provision following the commitments to legislate on this issue in the Digital Economy Act 2017, future-proofing is appropriate. It is likely that businesses increased provision in anticipation of

[11] Further Statement: Making on-demand Services Accessible, Ofcom, 2021
[12] Internal DCMS analysis based on a linear projection.

requirements coming into force, so there is a risk that without this regulation, providers would reduce their provision of these access services, both on making existing content accessible, but likely also on new content. For reference, the Ofcom access services report released in 2017 found that between April 2015 and March 2016, 68% of ODPS providers did not provide any access services. Of the 32% that did provide access services, 32% provided some subtitles, and only 6% provided audio description and signing.[13] More granular data on the proportion of accessible content across the sector was not made available until 2017, when Ofcom changed the reporting requirements for ODPS. Whilst this data is not directly comparable to the Ofcom data previously quoted, it suggests that provision of access services increased in 2017, so there may have been a shift in provision in response to the Digital Economy Act.

63. This legislation also ensures that there will be provision across different platforms, as currently some VoD providers only have access services on some platforms. It is not possible to estimate accurately the level of access feature provision that providers would have undertaken in this counterfactual scenario. Therefore, the additionality of this legislation for subtitles and audio description is most likely to come from future-proofing, as well as ensuring provision across different platforms, so that a certain level of provision and quality can be guaranteed across larger providers.

64. Furthermore, it is likely that provision of sign language services will not improve absent any legislation. Ofcom published their recommendations in 2018, meaning it is likely that some businesses have increased their provisions of subtitles and audio description in order to meet Ofcom's targets ahead of regulation. The fact that signing has made no progress in the intervening years suggests that regulation is required to increase provision - particularly since there have been years where the proportion of signed content has decreased, suggesting that it is not guaranteed that newer content will be more accessible. Therefore, the main cost of maintaining the status quo is that provision of signed content is unlikely to increase. Benefits from signing provisions will be additional.

65. This data is at the sector level, based on a sample of 44 services, and is not at a firm-specific level, and so there will be some firms performing above, and some below, the industry average number provided. It is reasonable to assume the largest firms are performing highest, as they are most likely to have the resources to provide these services, and will more likely feel the need to do it as their audiences are likely to be larger and more diverse.

66. The main benefit of the current arrangement is that VoD providers have the flexibility to provide whatever access services they deem appropriate, and in the way they deem appropriate. However, as discussed above, this presents significant costs to those who rely on access features if providers choose not to make them available across a range of content and platforms. This is because providers differentiate through content, meaning that audiences who rely on access services cannot switch to another provider that does have these services if the content they want to watch is on a platform without access services. They have no choice but to miss out on content.

[13] Ofcom On-demand programme services: Access services report 2016

Option 1: *(preferred)*

Introduce specific targets for video-on-demand services to provide certain levels of access services across their catalogue of content, and introduce reporting requirements.

- Require that video-on-demand services offer subtitling on 80% of their catalogue, audio description on 10%, and signing on 5%.
- Allow for exemptions to fulfilling these targets on the basis of audience benefit, affordability, and technical difficulty.
- Require video-on-demand providers to report annually to the regulator on the extent to which and how they have met the requirements.

Table 2: Summary of main costs

Cost	**Scale**
The costs to VoD providers associated with having to familiarise themselves with the legislation, understanding its implications and manage how this affects their business plans	The direct cost to businesses totals £43,000. It is not known exactly how many businesses will be in scope of this regime, as this will be set by the Secretary of State through secondary legislation, following a report from Ofcom. An estimate has been used to calculate the total familiarisation cost, using Ofcom evidence on services with revenue above £10m per annum.
Development costs for VoD providers in setting up the technology required to provide access services.	These costs are estimated to be £🛠 per provider, on the basis that the average estimated cost per app-based platform is £🛠 and the average estimated cost per bespoke solution platform is £🛠. On aggregate, this sums to a total cost to business of £🛠 per year over the first four years. However, there is a degree of uncertainty over how providers will choose to operate across multiple platforms and how Ofcom will choose to enforce requirements.
Cost of ensuring existing content libraries has the appropriate accessibility features	These costs to businesses are estimated to total £🛠 over the first four years, as this is the timeframe for providers to fill the gap between the targets and current provision on existing content.
Cost of ensuring new content hits the accessibility features	The cost to businesses is estimated to be £🛠 per year. These costs will apply from the first year of the regulations as the targets will apply to all new content.
Ongoing costs to Ofcom of monitoring and enforcement	These costs are related to determining exemptions; publishing the list of requirements; enforcement actions compliance where targets are not met; and obtaining additional information to inform its regulatory duties every two years. As per Ofcom's fees principle, this will represent a cost to businesses.
Set up costs to Ofcom	As per Ofcom's fees principle, this will represent a cost to businesses.

Cost to video-on-demand providers of annual reporting to the regulator on the extent to which and how they have met the requirements.	The costs to business of reporting are difficult to estimate as ODPS providers are already obliged to report on their access service provision. Ofcom have verified that the costs are assumed to be minor and therefore have not been monetised.

Table 3: Summary of main benefits

Benefit	**Scale**
Benefit to consumers of additional accessible content	The estimated average annual benefit to consumers is £2,259,000. It is likely that this value is an underestimate, as it is based on willingness to pay for a single VoD platform, and does not consider the value of accessibility services to people who choose to use them, rather than those who need to use them. Furthermore, this estimate likely does not fully factor in the increasing proportion of subtitled content that is likely over the initial four year timeline.
Reduced social isolation	As a result of increased accessibility services, hearing and/or visually impaired audiences will be able to consume more content, and so will feel less socially isolated. It is difficult to measure the benefit of reduced isolation, although some effort has been made to quantify the cost of depression, and it is likely that some of this benefit has been monetised using our willingness to pay methodology. Therefore, we have left this unmonetised.
Increased revenue for businesses as a result of attracting more consumers who require or desire accessible content	Businesses are likely to benefit from this legislation, as consumers will be more willing to pay for a VoD subscription. However, it is unknown whether this benefit will outweigh the cost of providing additional accessibility services. This benefit has not been monetised.

Costs

67. The main quantifiable impact is the cost to business, which will be covered by VoD providers. These are illustrative estimates, representing a maximum impact on the basis of a *status quo* counterfactual to provide an indication of the scale of impact. As shown below, it is largely estimated on evidence provided by Ofcom as a result of their independent consultation with affected groups. This assessment will also consider the regulator costs. It is assumed that all businesses will comply with the code.

68. In many areas cost estimates have been redacted from this published version as they have been provided to Ofcom and DCMS in confidence and are commercially sensitive. However, these estimates have been reviewed by the RPC. A ✂ symbol indicates where information has been redacted.

Monetised Costs

69. The calculation for the cost to business is broken into four sections:
    - Familiarisation costs
    - Other transition costs
    - Running costs
        - Cost of ensuring existing content libraries has the appropriate accessibility features
        - Cost of ensuring new content hits the accessibility features
    - Monitoring and Reporting costs

Transition Costs

Familiarisation Costs:

70. There will be a familiarisation cost to VoD providers and wider businesses in the industry of having to read the regulation, understand its implications and manage how this affects their business plans. They will also have to familiarise themselves with any ensuing Ofcom guidance. There will be a varying level of familiarisation depending on the degree to which this regulation will affect the business practices.

71. The calculation of familiarisation costs is detailed in the table below. Firstly, we have conservatively assumed that all VoD services that target UK audiences will require a legal employee to read the SI and understand whether it has implications on the firm. We then assume that VoD providers who are exempt from the regulation, i.e. not tier 1 organisations, will not only read the SI but also discuss at management level what the implications could be. We finally assume that tier 1 VoD providers, who are liable to the code, will spend more time planning potential adjustments to their business model.

72. At this time, it is not known exactly how many services will fall into Tier 1 as this will be determined by the Secretary of State following a review from Ofcom. For context, Ofcom identifies 26 UK services with >£50m annual revenues, and 9 services with between £10m & £50m revenues. Following Ofcom's report and further secondary legislation, the tiers will be set, the number of firms in tier 1 will be known and these estimates will be updated.

73. Using companies with > £10m+ turnover as a proxy for the number of businesses in scope - noting that this is used for assessment purposes only and this is only one factor the Secretary of State could consider - there are an estimated 35 businesses in scope. We estimate that each of these 35 businesses will require 40 hours of time to discuss and plan adjustments to their business models. Taking these costs together, we get the total cost to businesses of familiarising themselves with this change and adapting their business models accordingly , and then we apply an uplift of 22%. Finally, the cost to the 3 public bodies[14] needs to be removed from the total cost to business for the purpose of the EANDCB. This results in a **total familiarisation cost to business of £43k**, using the following calculations:

Table 4: Familiarisation cost calculations

		Source/Assumptions
Number of VoD providers regulated by Ofcom (125) * Median hourly wage of a legal employee (£25.92) * 2 hours	£6,480	*Ofcom, List of on-demand programme service (ODPS) providers currently regulated by Ofcom, October 2022.*

[14] BBC, S4C and Channel 4

		Annual Survey of Hours and Earnings, ONS.
Total non-exempt, tier 1 VoD services (central estimate = 35) * hourly wage (£20.81) * 40 hours	£29,134	*Annual Survey of Hours and Earnings, ONS. Average hourly wage of an individual in the Information and Communication SIC.*
Sum	£35,614	
Uplift of 22% (applied to cover non-wage labour costs, as per RPC guidance)	**£43,449.08**	*Implementation costs, August 2019, RPC.*
Minus the cost to the 3 public bodies (assumed to be tier 1) when calculating the EANDCB = £43,449.08 - £2,479.20	£40,969.88	3*20.81*40. *The three public bodies are the BBC, C4 and S4C.*

Other transition costs:

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

75. To clarify, the two types of platform are:
    - "App-based" platforms, where the ODPS provider controls the means of delivery and technical standards of the programme files.
    - "Bespoke solution" platforms, where the ODPS provider's content is disaggregated into a separate "service", where delivery and technical standards of the programme files are controlled by a third-party.

76. In their analysis, Ofcom have taken averages of likely key costs in making these estimates. In this impact assessment, we use many of the assumptions used by Ofcom in their analysis, and have applied them to our initial estimate of the services that are likely to be in scope of the legislation. A further impact assessment will be produced alongside future secondary legislation when the tiers will be set, and there will be greater clarity at this time around the number of services in scope, allowing a more accurate estimation of costs to business.

77. This impact assessment focuses on the cost to VoD providers, not on the platforms that carry VoD services, unless these platforms also provide their own services.

78. Ofcom split out the costs involved into 3 categories:
    1. *Development*:
        a. This involves internal system development costs i.e. to develop the capacity to store access services files; assumed to be negligible by Ofcom
        b. Set up costs in relation to each platform
        c. Platform updates
    2. *Running*:
        a. this involves the contract management with the provider of access services and/or the internal operating costs of the provision of access services,
        b. purchase of access service assets
        c. and/or cost of creating access services from scratch, the cost of process
        d. and/or cost of repurposing broadcast access services for use on-demand
        e. Processing and delivery costs
    3. *Additional*:
        a. Monitoring and reporting

79. Categories (2) and (3) are classified as 'ongoing' costs and will be examined in the section below.

Development costs

80. VoD providers that fall in scope of the regulation will face costs to put in place mechanisms to comply with the code. As described in the independent impact assessment conducted by Ofcom[15], this includes set-up costs and platform updates. Set-up costs reflect the new labour and capital which will need to be put in place. This includes the technology to provide the service to platforms (e.g. Sky Catch Up, which displays multiple ODPS providers). Once the services are on a platform, Ofcom reports that they will face additional charges to adapt the service to any updates which the platform requires.

81. However, it is clear that a number of VoD providers already run access services and will therefore already have the capability and processes in place to meet the requirements of this legislation. Analysis on the list of VoD providers that Ofcom collect access services data on[16] suggests that c.11% of providers already run signing and audio description features, and c.61% already provide subtitling. Applying these proportions to the estimated 35 VoD providers that will be in Tier 1 suggests that 31 services will need to outlay the costs associated with setting up signing and audio description services, and 14 will have to outlay the cost associated with setting up subtitling capability. It is likely that this is a significant overestimate as Tier 1 services will be the largest VoD providers, and it is these providers that are more likely to already have systems in place.

82. The cost information Ofcom received showed that costs are likely to be higher for bespoke solution than app-based platforms so in their impact assessment they used two average estimates of set up costs for each type of platform:

    - Average estimated cost per app-based platform = £
    - Average estimated cost per bespoke solution platform = £

83. As the Tiers are yet to be set, it is not possible to know whether the VoD providers in scope will be operating on app-based platforms or on bespoke solution platforms. Furthermore, it is not

[15] Further Statement: Making on-demand Services Accessible, Ofcom, 2021
[16] Television and on-demand programme services: Access services report – January to December 2021, Ofcom

known how many platforms each provider will operate on. Therefore for this analysis it is assumed that each provider will have to undergo the cost of setting up accessibility features to operate on one app-based platform and one bespoke solution platform. The impact assessment which will accompany future legislation will go into more detail on this. The total set-up cost per provider is therefore estimated at £[illegible].

84. This value has a degree of uncertainty. It could be an underestimate if providers choose to operate across multiple platforms. There is also a possibility that this value could be an overestimate, depending on how Ofcom's recommendation to enforce requirements flexibly is interpreted. Ofcom will specify the details of how services need to meet the requirements in its code, and assess the specific exemptions, which will mean this value is likely to differ across providers. Furthermore, these proportions were based on all providers that Ofcom collects data on. The largest providers are likely to already have some of these services in place, so Tier 1 will have higher levels of existing access feature provision, and therefore set-up costs should be lower than we have estimated. Finally, Ofcom's current understanding is that providers are likely to incur one main development cost to make their services available on bespoke solution platforms, which are then delivered to consumers across a variety of further end platforms or devices.[17]

85. It is assumed that this cost covers the set-up of all three of signing, audio description and subtitling features, and so this estimate will be applied to 31 services, despite the fact that a lot of these providers already offer subtitling. Therefore the total cost to business is estimated at £[illegible].[18] These costs will need to be incurred once within the first four years of the policy. Therefore, we assume that the £[illegible] per business is split equally over the inaugural timeframe.

Sensitivity analysis

86. To account for uncertainty in our assumptions around the number of providers in scope, the set-up cost estimates provided by Ofcom, and the number of platforms they operate on, we have shown how costs would change in a low estimate where costs were 20% lower, and a high estimate where costs are 20% higher, to show an indicative range.

Table 5: Sensitivity analysis on one-off development costs

	Central Estimate	**Low Estimate**	**High Estimate**
Total one-off compliance costs	£[illegible]	£[illegible]	£[illegible]
Per year over first 4 years	£[illegible]	£[illegible]	£[illegible]

Ofcom Costs (transitional)

87. Ofcom have provided an estimate of the one-off set up costs arising from this legislation. These include the cost of having to draft the new Code and guidance, as well as resource/FTE requirements. Cost estimates have not been included in this impact assessment. All cost estimates have been reviewed by the RPC in their independent scrutiny.

Ongoing costs

Cost of ensuring existing content libraries have the appropriate accessibility features

[17] See Ofcom's Further statement: Making on-demand services accessible for detail

[18] 31*£[illegible]

88. Tier 1 VoD services will first have to ensure that their service meets the code's specifications within the 4-year transition period. Therefore there is the initial cost of having to fill the gap between the targets and the current provision. For this assessment, this has been counted as an ongoing cost because they will be split over the 4 year transitionary period.

89. Again using the framework scoped by Ofcom, the running costs associated with this legislation can be attributed to several means. The majority of running costs will originate from the creation of accessibility features. This will either be done from scratch (for material which is commissioned purely for online viewing) or by repurposing content which is already subject to accessibility standards on television. For providers with a broadcast service it is assumed that 90% of their content comes from broadcast, and will already be subject to accessibility standards on television, whilst 10% of their content will go straight to online. For online only services, all will go straight to online. As the detail of the tiers is yet to be set, it is assumed that one third of the providers in scope will have broadcast services, and two thirds will be online only.

90. Confidential estimates of the hourly cost to produce subtitles, AD and sign were provided by Ofcom, along with the relatively smaller cost of repurposing. They are industry provided estimates and, due to their commercial sensitivity, cannot be disclosed in the published version of this impact assessment.

Table 6: Estimated running costs per hour

	Subtitles	Audio-description	Signing
Creating content	£🛠	£🛠	£🛠 [19]
Repurposing broadcast content	£🛠	£🛠	£🛠

91. Ofcom figures show the library size for each VoD service as of 2021[20]. They also show how much of each accessibility feature is already provided. Using these, we are able to calculate the current gap in provision for each VoD provider. This is visualised below using average figures from the Ofcom report for larger businesses[21]:

Table 7: Current high-level 'Provision Gap' (% of content with each feature, as of 2021)

Service	Current Provision	Target Provision	Provision Gap
Subtitles	66%	80%	14pp

[19] This includes the cost of only sign-interpretation because services will have a choice between sign-interpretation and sign-presentation. The intention is that VoD providers can decide which would be most beneficial for their audiences, based on Ofcom best practice guidance, and so would put the equivalent cost towards an existing provider of sign-interpreted or sign-presented programming. The cost estimate for the latter is higher so this assessment assumes providers will choose the lower cost option. Ofcom continue to aim for regulations which result in a mix of signed content, which will be set out further in their On-demand Code.

[20] Television and on-demand programme services: Access services report – January to December 2021, Ofcom

[21] Although provision of audio description is on average above the 10% target for provision, on an individual provider level, there are many providers who do not provide any audio description services.

Audio Description	17%	10%	None
Sign Language	2%	5%	3pp

92. The provision gap on an individual VoD provider level is used to work out the number of hours of content that needs to be made accessible in order to meet the target. Individual provider level data has been used because provision varies substantially across providers. Across the sample of large providers that we have data for, provision of signing varies from 0% to 1.4%; audio description from 0% to 30.1%; and subtitles from 0% to 99.9%. Given that data exists on an individual provider level, we expect that we will be able to improve the modelling of costs when we know which businesses will be in Tier 1.

93. Multiplying the individual provision gaps by the cost per hour estimates, and incorporating the earlier assumptions on the proportion of hours that will be repurposed from broadcast content, provides a total cost to VoD providers of £✂. This will be spread out over the 4 year transition period, with costs profiled on the assumption that businesses will spend a smaller proportion of the total cost in the first few years.

Table 8: Detailed workings

		Signing	**Audio Description**	**Subtitling**	*Assumptions/source*
Total number hours that need to be made accessible to reach targets	a	10715	22392	99214	*Based on VoD provider-level data*
Expected tier 1 number of hours *(a x 0.66)*	b	7072	14779	65481	*Ofcom collects data on c.60 providers, for this assessment we assume 35 providers are in scope, but these will be large providers with large content libraries. This analysis takes two thirds of total hours in the content libraries of providers ofcom collects data on*
Hours from providers with broadcast services *(b x 0.33)*	c	2334	4877	21609	*DCMS estimate - one third of hours will be from VOD providers that offer a broadcast service. Uncertainty in this estimate is accounted for in the sensitivity analysis below.*
Hours from broadcast *(c x 0.9)*	d	2100	4877	21609	*90% of hours from providers with broadcast services will be repurposed from broadcast - Ofcom estimate*
Hours straight to online (c x 0.1)	e	233	488	2161	*10% of hours will go straight to online - Ofcom estimate*
Hours from online only providers *(b x 0.66)*	f	4738	9902	43872	*DCMS estimate - two thirds of hours will be from VOD providers that do not offer a*

					broadcast service. Uncertainty in this estimate is accounted for in the sensitivity analysis below.
Cost per hour for creating content	g	£[redacted]	£[redacted]	£[redacted]	*Ofcom estimate*
Cost per hour for repurposing content	h	£[redacted]	£[redacted]	£[redacted]	*Ofcom estimate*
Total cost for business *(d x h) + (e x g) + (f x g)*	i	£[redacted]	£[redacted]	£[redacted]	
Total cost across all 3 features (Sum of i)		£[redacted]			

94. This analysis is subject to a number of assumptions. The most uncertain assumption is on the proportion of currently inaccessible hours that is provided by VoD providers with a broadcast service compared to online-only providers. This assumption is important as it impacts the total number of hours that will be repurposed from broadcast content, which has a lower cost to business. Sensitivity analysis has been undertaken to account for this uncertainty. For the central estimate, it is assumed that one third of providers will have broadcast services. The table below shows how total cost to business differs for a high estimate where 10% of providers offer broadcast services, and a low estimate where 50% of providers offer broadcast services.

Table 9: Sensitivity analysis[22]

	Central estimate	High estimate	Low estimate
Total	£[redacted]	£[redacted]	£[redacted]
Per year over 4 years	£[redacted]	£[redacted]	£[redacted]

95. Ofcom's data is a list of all VoD providers that they collect data from, which is significantly more providers than will be included in Tier 1. This therefore represents a significant overestimate. Also, it will be the largest providers that will be included in Tier 1, and these are the providers that are more likely to already be meeting the target for accessibility feature provision.

Cost of ensuring new content hits the accessibility features

96. In order to determine the ongoing cost of provision, we need to calculate the proportion of new content on the average on-demand service. Ofcom present the library size of some of the largest VoD providers operating in the UK[23] which acts as a good proxy for the library size of potential tier 1 providers.[24] According to this, in 2021, 17,000 hours of new content was added

[22] Although costs have been presented as 'per year' for sensitivity purposes, these costs have been profiled in our analysis.
[23] Media Nations Interactive Report, Ofcom, 2022
[24] We do not know which businesses will be classed as tier 1, but the intention is that these will be large providers, so we have made an assumption on the number of hours of content added per year based on data from a sample of the largest providers operating in the UK.

to the libraries of these large providers. Using the previous dataset on hours of accessible content, looking just at these largest VoD providers, and assuming that providers would maintain their current shares of provision of accessible content, we estimate the proportion of this content that needs to be made accessible to reach the target (the 'provision gap'). Then, after multiplying this by the cost per hour estimates, and incorporating the earlier assumptions on the proportion of hours that will be repurposed from broadcast content, this provides a total cost to VoD providers of £ a year.

Table 10: Detailed workings

		Signing	**Audio Description**	**Subtitling**	*Assumptions/source*
New hours every year to make accessible	a	16831	16831	16831	*Taken from sample of large VoD providers found in Ofcom Media Nations*
Target for accessibility *(a x target for provision of that access feature)*	b	841.55	1683.1	13464.8	*Target of 80% for subtitling, 10% for audio description and 5% for signing*
Hours that should already be made accessible *(a x 2021 provision as a share of hours for the largest providers)*	c	91	0	9929	*Assuming 2021 provision as baseline, this is the minimum number of hours that should have accessibility requirements without regulation*
Hours that need to be made accessible *(b-c)*	d	750	1683	3536	*Number of hours required to have accessibility services to meet the target, given 2021 provision*
Hours from providers with broadcast services *(d x 0.33)*	e	248	555	1167	*DCMS estimate - one third of hours will be from VOD providers that offer a broadcast service. Uncertainty in this estimate is accounted for in the sensitivity analysis below.*
Hours from broadcast *(e x 0.9)*	f	223	500	1050	*90% of hours from providers with broadcast services will be repurposed from broadcast - Ofcom estimate*
Hours straight to online *(e x 0.1)*	g	25	56	117	*10% of hours will go straight to online - Ofcom estimate*
Hours from online only providers *(d x 0.66)*	h	503	1128	2369	*DCMS estimate - two thirds of hours will be from VOD providers that do not offer a broadcast service. Uncertainty in this estimate is accounted for in the*

					sensitivity analysis below.
Cost per hour for creating content	i	£	£	£	*Ofcom estimate*
Cost per hour for repurposing content	j	£	£	£	*Ofcom estimate*
Total cost for business *(f x j) + (g x i) + (h x i)*	k	£	£	£	
Total cost across all 3 features	l	£			

97. Again, this analysis is subject to a number of assumptions. Sensitivity analysis has been undertaken to account for uncertainty in the assumption on the proportion of currently inaccessible hours that is provided by VoD providers with a broadcast service compared to online-only providers. Again, for the central estimate, it is assumed that one thirds of providers will have broadcast services. The table below shows how total cost to business differs for a high estimate where 10% of providers offer broadcast services, and a low estimate where 50% of providers offer broadcast services.

Table 11: Sensitivity analysis

	Central estimate	High estimate	Low estimate
Total	£	£	£

Additionality

98. It is important to stress that, as set out earlier in section 2, VoD providers are already improving the number of hours of their content that offers access features. Therefore, even without this legislation it is highly likely that VoD providers will undergo these costs to provide features, especially the large providers that will be captured in tier 1. Whilst this analysis does attempt to take into account the costs that VoD providers will have foregone without legislation, it is not possible to accurately comment on the level of access feature provision that providers would have undertaken in the counterfactual scenario. This is particularly relevant to making existing content accessible, as it is likely that providers would prioritise their new and most popular content for accessibility. The Option 0 analysis includes details of the counterfactual scenario.

99. This analysis is conducted on the assumption that this intervention is to some degree future-proofing provision against reductions in amount or quality in the future. Hence, when calculating the costs of ensuring new content is accessible, we only consider the costs above the existing level of provision. It is reasonable to assume that a proportion of the estimated costs in this section would have been foregone even without intervention, and therefore this is an overestimate of the actual additional costs of this intervention.

Exemptions

100. T
hese requirements will only apply to Tier 1 organisations, ensuring that only large TV-like

services come under these provisions. The exemptions framework suggested by Ofcom also includes exemptions based on technical or operational obstacles, low audience size and disproportionate cost, meaning that providers will not be required to meet targets where it is not deemed to be feasible. These are detailed in the Ofcom report on making on-demand services accessible.[25]

Ofcom Costs (ongoing)

101. Ofcom will incur ongoing costs from enforcement of the new rules. These include staff costs, drawn mainly from policy development and enforcement, but also legal, economist, research and technologist colleagues. Estimates do not include non-staff costs.

102. One of the activities involved in this cost is determining exemptions. Some of this information is already collected in relation to VoD fees, but this will also require analysis of provider submissions on audience figures, and requesting and analysing information in relation to known technical difficulties. There are also costs associated with publishing annually the list of requirements. Another ongoing activity is taking enforcement action where targets are not met, which may require handling retrospective appeals for exemptions where e.g. catalogue size increase has increased costs. This is expected to be rare but time-consuming when necessary. There is also the cost every two years of obtaining information on the cost of creating and repurposing access services; costs of establishing functionality on given platforms; and the proportion of content that is likely to be replaced annually/repurposed from linear channels / repeated across branded services.

Ofcom fees (which represent a cost to business)

The costs to Ofcom of enforcing VoD accessibility regulations would be fully recovered via fees from VoD providers. This is consistent with the statutory scheme which allows Ofcom to charge fees to recover the costs of carrying out the relevant functions. Therefore, costs to Ofcom represent a cost to business. There may also be costs to individual businesses as a result of enforcement action in the case of non-compliance which we are unable to estimate as the frequency of such enforcement action is difficult to predict.Ofcom will set out further details of implementation and enforcement in their On-demand Code, subject to further consultation, and where required, impact assessments.

Non-monetised Costs

Reporting costs (as a cost to business)

103. In line with Ofcom's impact assessment, no new systems will need to be set-up to facilitate reporting of this policy. ODPS providers are already obliged to monitor and report on their access service provision, so Ofcom do not believe these proposals will involve significant additional expense. There may, however, be additional time taken up on both the side of the VoD provider and the regulator. Ofcom have verified that this is assumed to be minor from the perspective of the VoD provider and is not monetised.

Consumers

104. Option 1 is unlikely to lead to costs for consumers. It is possible that providers could reduce the amount of available content in order to reduce the costs of complying with these new

[25] Further Statement: Making on-demand Services Accessible, Ofcom, 2021

regulations. This would probably take the form of reducing existing content, perhaps by not renewing the rights to have some content on their platforms, rather than reducing the amount of new content they produce. Given the levels of competition in the subscription market, particularly in light of recent evidence that VoD platforms are forecast to lose subscribers in 2023, this is unlikely, and these businesses are also unlikely to pass on costs to consumers. Furthermore, the additional costs incurred for ODPS are low relative to their total revenue, and Ofcom's recommendation that exemptions should be made where costs are more than 1% of a provider's turnover limits how much businesses will have to spend on these services, providing additional protection against this risk.

Benefits

105. The main quantifiable impact is the benefit to consumers. As detailed below, the potential benefit will be estimated through market values and inferred willingness to pay for these provisions. The other benefits relating to business revenue and health spending will be researched but not quantified in the headline figures. A fall in available content is outlined as a potential risk, rather than a direct cost of the measure.

Monetised Benefits

Consumers

106. T
he main beneficiaries of the measure will be consumers with hearing and/or visual impairments who will enjoy a greater range of online viewing. There is the direct consumer welfare benefit from the intrinsic value disabled consumers place on watching more programmes, as well as, an indirect benefit of the wider wellbeing consequences as a result of inclusivity - we only monetise the former.

107. T
his value depends on how much content is made accessible. Assuming that VoD providers will prioritise making their most popular content accessible (as detailed below), and that consumers value more popular content more highly (as there is greater demand for it), the value placed on additional accessibility provisions depends on the popularity of the content that will be made accessible.

108. T
his value is then multiplied by the number of consumers that are targeted by the measure, and adjusted for the proportion of the population that has access to VoD services. Finally, it is adjusted for the proportion of ODPS that are likely to be covered by these regulations (the Tier 1 providers referenced earlier).

109. W
e can calculate the benefit using this formula (using subtitles as an example):

Relevant population (Number of people with hearing impairments, less deafblind and sign language)	*a*
Annual subscription cost	*b*
Value placed on additional content (demand for content filling the gap from current provision to target provision)	*c*

Willingness to pay for one average SVoD with increased accessibility features	*d = (b*c)*
Population with access to at least one SVoD	*e*
Proportion of services with any access provisions	*f*
Population who have access to a SVoD service and might watch VoD	*g = (e*f)*
ODPS coverage (proportion of Tier 1)	*h*

$$Benefit\ to\ consumers\ =\ a * d * g * h$$

110. The calculation for the monetised benefit to consumers is therefore broken down into 5 sections in this analysis:

- Price of subscriptions
- Willingness to pay for additional accessible content
- Population with hearing impairments, visual impairments or who use sign as a first language
- Population with access to VoD services with access provisions
- Tier 1 content coverage

Subscription prices

111. According to industry market research[26] there is a medium and increasing level of competition in the programming and broadcasting industry, particularly so in the digital sphere. We could therefore argue that market prices, such as subscription fees, are a relatively efficient indication of demand for these services. However, the value of public broadcasting and advert-supported content is less transparent.

112. Online on-demand platforms[27] charge an average of £7.49 per month for a standard package (some including linear), with a range of £4.75. The TV licence fee costs £13.25 per month, with a 50% discount for the blind (£6.63). This figure is harder to use because the fee is legally required to watch any linear programming, as well as on-demand programming from just BBC iPlayer. Subscription VoD (SVoD) may also better represent the general population as it accounts for almost four times the viewing figures of broadcaster VoD (BVoD) services[28]. The below therefore estimates the additional willingness to pay for one average SVoD platform with increased accessibility features. This simplistic revealed preference method rests on the assumption that viewers require accessibility features to enjoy VoD content, therefore valuing a fully accessible platform the same on average as a consumer without hearing or visual impairments.

Willingness to pay for additional accessible content

113. First, we must calculate consumers' willingness to pay for the additional accessible content required to meet the target levels of provision. We take the willingness to pay for full access to at least one SVoD service as £89.88 a year (£7.49*12) - *b* in our formula. However, we need to adjust for the fact that not all content is being made available by the code. Looking at ODPS where access services were offered, 66.1% of programming hours were subtitled in 2021 and 17.2% were audio described. Those who offered signing made it available on 2% of content.

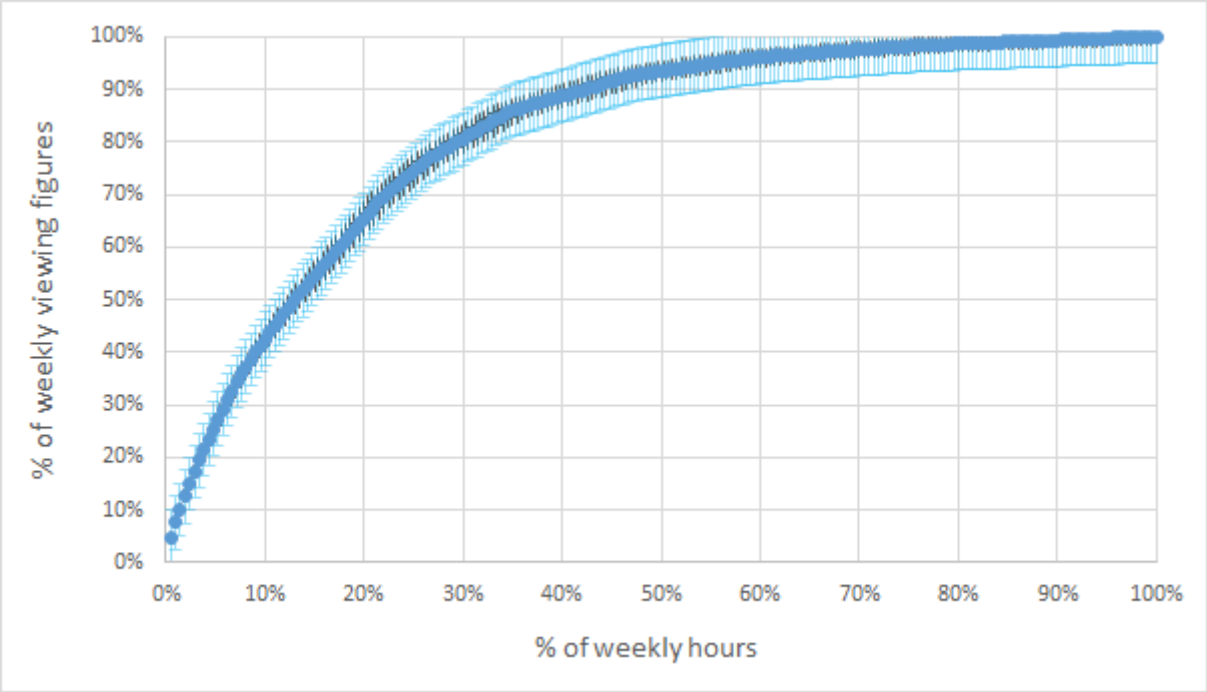
[26] IBIS World Industry Report J60.200 - Television Programming and Broadcasting in the UK
[27] Acorn TV, Amazon Prime, Apple TV+, Discovery+, Disney+, Hayu, Netflix, Paramount+, and Sky Now TV
[28] Ofcom, Media Nations 2022

Therefore, we estimate that the code will fill a gap of 13.9% subtitles and 3% sign-language. On aggregate, audio description services are already provided at a level above the 10% requirement, therefore, this is not included in our analysis as the requirement is future-proofing, rather than changing behaviour.

114. In addition, ODPS providers and platforms prioritise the provision of accessibility services for their flagship and most popular shows[29]. Therefore, priority content is valued more than non-priority content and we must adjust for the varying value consumers will place on it. There is little research available in this area. One way to approximate the relative demand for priority content could be to compare viewing figures for the most popular shows with the remainder of shows.

115. Comparing hours of content with viewing figures results in a curve (Figure 2) which serves as a proxy for the relative demand placed on the most popular shows. If the below curve was straight then it would demonstrate a directly proportional effect between the proportion of hours being covered and the demand met by viewers. However, this concave shape squeezes the benefits at the higher levels of provision where more subtitles would be introduced. Conversely, the benefits of AD and sign are extended because they address the most popular programming at the lower levels of provision.

Figure 2: Demand for priority programming



Source: BARB data, 2018

116. To calculate this curve, the most reliable and readily available data on viewing figures comes from the British Audience Research Board (BARB). Although this instead provides linear broadcasting viewing figures, we use it as an approximation of VoD on the assumption that there is a similar distribution of number of shows making up cumulative viewing numbers on VoD as linear and include sensitivity to account for uncertainty. The data to do this analysis based on VoD services is not available to us.

117. TV viewing figures are calculated by multiplying the number of people who watched a show by

[29]https://www.skyaccessibility.sky/visual-impairment

their average minutes of viewing, including Viewing On Same Day As Live (VOSDAL) figures. Taking weekly viewing figures from BARB[30] across the traditional top 5 linear channels, the top 30 respective shows (150 in total) are viewed a collective 405 million times a week. The average programme length was approximately 0.8 hours, meaning this equates to around 324 million hours. Ofcom estimate that all of the top 5 linear provider's shows are viewed by 83.6% of the population a week. This would mean that c.56 million people were reached that week. We know that the combined average viewing time across those channels (including + 1 equivalents) was 11h8m (or 11.13 hours). We therefore estimate the total viewing time that week was approximately 625 million hours, meaning that about 53% of viewing figures were taken up by the top 30 (150) shows that week across the PSBs. Using the 0.8 hours average length, these top 30 (150) shows contributed to 14.3% of hours in a full week. With this information, we can plot the average proportion of time taken up across the channels from 1 to 30 (shown above); and then project a cumulative frequency path.

118. A
s noted earlier, we assume that VoD viewing habits are comparable to linear TV viewing habits. We might expect VoD to be flatter than this curve, as it gives more freedom to viewers to watch shows when they want, whereas linear television is subject to primetime hours which magnify the differences between priority and non-priority content. If this were the case, then using this above curve would be underestimating the benefits as it reduces the impact of subtitle provisions, which target the highest number of viewers with respect to the other services (expanded on below).

119. W
e estimate from the above that filling the gap from 66% to 80% for subtitles accounts for around 2% of demand. Filling the gap from 2% to 5% for sign language accounts for around 12% of demand. As noted above, audio description has not been included in this analysis, as it is currently provided above the required level, on average.

120. F
or signing, sensitivity of 5% either side of these estimates has been used. Provision of subtitles has increased substantially year-on-year and is currently at the upper end of this distribution, so sensitivity analysis has been conducted with lower variation, at 1% either side. A 2% sensitivity range for demand covers a range of provision that is 6pp lower and 8pp higher than the current level of provision of subtitles (66%). This is justified because there is more certainty at the lower end of provision and less variability at the higher end. The error bars on Figure 2 show a 5% sensitivity.

121. T
his gives us the value placed on additional content to meet the target levels of provision (*c* in the above formula). When multiplied with the annual subscription cost, we get consumers' willingness to pay for one average SVoD service with increased accessibility features (*d* in the formula). Next, we need to calculate the relevant population.

Relevant consumer population

122. W
e estimate the number of people with hearing impairments, visual impairments and those who use sign as a first language. These estimates differ from the figures used publicly by other organisations like the RNID and the RNIB, as they were calculated specifically for the purposes of this impact assessment to estimate how many people could benefit from additional subtitles, audio description and signing provisions, rather than estimating how many people there are in the UK with sight and hearing loss overall. Our figures are based on the same sources used by the RNID and RNIB.

[30]https://www.barb.co.uk/viewing-data/weekly-top-30/ Viewing figures are dated 10-16 September 2018. This dataset has since been discontinued with no suitable alternative.

123. A widely used estimate of the number of people with hearing impairments is 11 million, taken from Action on Hearing Loss[31]. This is developed from a study by Davis (1995)[32]. Whilst this study is highly reputable, the breakdown of severity within the updated 11 million figure is unclear. In 2012, Action on Hearing Loss separately estimated that 7.5 million people use subtitles in the UK on linear television[33], although 6 million of these people did not have hearing loss. Akeroyd et al. (2014)[34] expand from the findings of Davis (1995) to calculate the prevalence of hearing loss over 35db, a level beyond which people start struggling to hear a normal voice[35]. They estimate this accounts for 3.8 million people under 80 and nearly 2 million people over 80 in England, Wales and Scotland, using 2011 census data. We scaled this up to 2023 using ONS population figures and included Northern Ireland, assuming the prevalence was on average the same as the rest of the UK.[36] This resulted in an initial 6.4 million people with hearing impairments who may use subtitles.

124. T he number of people with visual impairments in the UK is regarded to be about 2 million[37], although this includes people who are partially blind and those whose sight could be improved with correctly prescribed glasses. This figure is estimated from a paper by Pezzullo et al. (2018)[38], projected forwards to 2021 using population data. They also estimated that in 2013, there were 255,000 people in the UK who were blind. The former estimate is used by the Royal National Institute of Blind People. The RNIB quote a different figure for those who are registered blind or partially sighted based on a combination of data sources. For the purpose of consistency, we are using the 2013 figures for both visual impairment and blindness and projecting forwards to 2023 for our upper and lower bound.

125. W e start with 2 million as the upper bound, 269,700 as the lower bound, and take the central estimate as the midpoint between. A number of people are also deafblind. Sense estimate this to be 451,211.[39] This is subtracted from the upper bound, as well as the above estimate of people requiring subtitles, as this subsection will be less able to use either services. This puts our best estimate for people with visual impairments who may use audio description at 929,872. Finally, we take 87,000 as the estimate of the number of people who use sign language as a first language[40]. Recognising that it is different to English, we also subtract this figure from the above estimate of people requiring subtitles so as not to double count them. After both adjustments this is now estimated at 5.8 million.

126. W e then account for these figures rising over the next 10 years. There are three factors putting upward pressure on them over time: 1) Population growth; 2) Ageing population and thus increased instances of impairments; and 3) Increased take-up of on-demand services. For proportionality purposes, we only factor in the former of the three; which should again lead to

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[31] Facts and figures, RNID

[32]Davis, A. and MRC Institute of Hearing Research. Hearing in Adults : The Prevalence and Distribution of Hearing Impairment and Reported Hearing Disability in the Mrc Institute of Hearing Research's National Study of Hearing. Whurr 1995.

[33] Subtitle it!, RNID

[34] Akeroyd, MA. et al. Estimates of the number of adults in England, Wales, and Scotland with a hearing loss. Int J Audiol. 2014 Jan;53(1):60-1.

[35] Facts and figures, RNID

[36] Estimates of the population for the UK, England, Wales, Scotland and Northern Ireland, ONS 2022

[37] Key information and statistics on sight loss in the UK, RNIB

[38] Pezzullo, L. et al. The economic impact of sight loss and blindness in the UK adult population. BMC Health Serv Res. 2018 Jan 30;18(1):63.

[39] Deafblindness statistics in the UK, Sense

[40] Making on demand services accessible, Ofcom, 2018

an underestimation of benefits. For this we simply take the average population growth rate since 2011, and apply it each year to the above estimates. This gives us the relevant populations of people with hearing and/or visual impairments, and those who use sign language as a first language (*a* in the above formula). We must then adjust for the proportion of people who use VoD services.

Population with access to VoD services with accessibility provisions

127. T
he next step was to account for the fact that not all of the population consume VoD. 67% of the UK population have access to at least one SVoD.[41] Ofcom calculates that 74% of ODPS have any access services.[42] We can reasonably assume that the population that require access services would generally choose not to consume VoD content if it is not made accessible to them. Therefore, the relevant population who have access to a SVoD service and might watch VoD is approximately 50% (74% of 67%) - *g* in our formula.

128. O
ne may presume that people with hearing and/or visual impairments are on average less likely to watch VoD services, due to the fact that not all content is accessible, and those of an older age may be more likely to watch linear programming instead.[43] Furthermore, there is a possibility that larger ODPS could account for a higher proportion of the share of the UK population with access to a SVoD service, and these services may be more likely to have access services. Therefore, we take 50% as the central estimate and include sensitivity of 10% either side to account for this uncertainty. For new viewers who will now pay to watch VoD, there will be a direct transfer across the economy to ODPS providers and platforms, however we do not factor this in to our benefit to business, discussed below.

Proportion of tier 1 content

129. T
he final calculation considers the fact that not all content on VoD platforms will meet the targets as certain ODPS providers will be exempt from the code. At this time, it is not known exactly how many services will fall into Tier 1 as this will be determined by the Secretary of State following a review from Ofcom, so we must make an assumption on the proportion of content from large providers. Based on the same Ofcom data used in our cost calculations, we calculate that non-exempt firms make up 66% of relevant content (*h* in our formula). We therefore multiply the benefits by this and our calculation is complete.

130. O
verall, we estimate the average annual benefit to consumers to be £2.3m a year, with an upper bound of £4.3m and a lower bound of £0.7m. The central estimate is comprised of £2.0m annual benefit from additional subtitles, and £0.2m annual benefit from signing. Benefits will not be fully enjoyed until the targets are met after 4 years. We therefore apply the full benefits from year 4 onwards. We assume that some benefits will accrue from year 2 as a result of businesses increasing provision to meet the interim targets.However, we lack information on how this will occur in practice. Table 11 includes more detail on the additional benefit of accessibility services by type.

131. W
e believe these may be underestimates of the benefits of the measure for several reasons listed above, including the fact that this uses the inferred willingness to pay for just one VoD platform, when many may purchase and/or consume multiple platforms. There is also a possibility that these estimates understate the benefits of subtitles. These estimates do not consider the value of accessibility services to people who choose to use them for other

[41] https://www.barb.co.uk/news/barb-releases-establishment-survey-data-for-q2-2022/
[42] Further Statement: Making on-demand Services Accessible, Ofcom, 2021
[43] Ofcom's Media Nations 2022 report finds that over-65s are more likely to turn to TV channels first when looking for something to watch, rather than SVoD services.

purposes, such as learning English. This is explained further as a non-monetised benefit. Furthermore, these estimates also do not factor in the increasing proportion of content that is subtitled. We do not know how provision of subtitled content would change absent of regulation, but given the recent trend presented in the counterfactual, we project that subtitled content would reach the required 80% before the four year requirement.

Table 12: Average annual benefit to consumers of additional provision of VoD accessibility services

	Central estimate	High estimate	Low estimate
Subtitles	£2,048,000	£3,952,000	£643,600
Audio Description	N/A	N/A	N/A
Signing	£211,200	£356,000	£100,700
Total	**£2,259,000**	**£4,308,000**	**£744,300**

Additionality

132. As outlined in Option 0, it is likely that provision of subtitled content will increase without regulation. However, this regulation serves to future-proof levels of provision at 80% of an appropriate quality. There is a risk that without regulation, providers would reduce their provision of access services or lower the quality, as explained in the cost analysis above.

133. However, the benefits of signing provisions that we have outlined are unlikely to be realised without regulation, as demonstrated by the trend of provision since 2018, and so these are additional.

Non Monetised Benefits

Consumers

134. There are potential further, indirect, wellbeing benefits arising from this regulation which are not captured by the direct willingness to pay. This can be ascribed to the wider consequences social isolation has on happiness, which may have health implications. More than 4 in 10 people attending low vision clinics are suffering from symptoms of clinical depression[44], whilst up to 50% of deaf people have poor mental health, compared with 25% for the general population[45]. A survey conducted by Action on Hearing Loss found that 71% of respondents felt they had missed out on, or been left out of, conversations with their friends or family because of a lack of subtitles on on-demand services. Representative charities such as the Royal National Institute for Deaf People and the Royal National Institute of Blind People have highlighted that the 350,000 people living with sight loss, and 12 million people living with hearing loss feel that they have been “left behind” because of the lack of accessibility on video-on-demand services.

135. It is possible that some of the benefits of reduced exclusion could be captured in our monetised benefits calculation, given the holistic approach we have taken. People who are depressed are less able to make rational decisions about purchases that might help reduce causes of

[44] Key information and statistics on sight loss in the UK, RNIB
[45] Understanding disabilities and impairments: user profiles

depression, and so we expect that only part of these benefits are captured using the willingness to pay methodology.

136. We can't speculate on the magnitude of effect between introducing this measure and reducing these negative health outcomes, but New Economy research places a value of reduced individual isolation at £8,500 per person based on the willingness to pay for QALY value of depression[46]. The annual cost to the UK for depression is estimated at £7.5bn, largely due to NHS costs[47]. However, for this impact assessment, this indirect benefit is left unmonetised.

137. Additionally, many viewers of on-demand services use accessibility features despite not having hearing or visual impairments. These features help people learn English (or a foreign language/ sign language), watch at low volume and multitask. Above figures suggested that around 6 million people without hearing impairments use subtitles on television. As demand grows for on-demand television, we could expect VoD figures to rise to this level in the not too distant future, if not already. It is, however, less essential for these viewers who will likely place a lower value on the provisions. In any case, these benefits are non-monetised in this impact assessment.

Businesses

138. There are multiple ways in which this measure could have a positive impact on the revenues of businesses. By raising the level of accessibility, we anticipate there to be a higher demand for VoD services which should lead to higher subscription revenue through attracting more subscribers, and/or higher advertising revenue for ODPS providers and platforms. Additionally, demand could be enhanced by increased reputation. As outlined above, this assessment does not speculate on the number of new viewers. Any transfer from consumers to businesses will be captured by the consumer welfare for simplicity.

139. A report by Deloitte for the European Commission[48] found broadcasting accessibility services to be amongst the priority goods and services with a high degree of regulatory coverage and fragmentation of technical accessibility requirements. It describes that low take-up rates by persons with a disability leads to businesses not being able to realise additional turnover, detailing the take up rate for broadcasting services to be 10 percentage points higher for people without disability than those with disabilities across the EU. The report goes on to estimate some high level figures about the market growth for people with disabilities across different sectors. It estimates that the broadcasting market could grow by 2 - 3 billion Euros if this potential was realised, whereas the market for 'private websites' could grow between 60 - 117 billion Euro. The cost of raising accessibility levels was estimated to only be 850 million to 2.5 billion Euros (all at EU level). These figures aren't specific enough to be relevant to this policy or the UK, but demonstrate that there is a large potential market for accessibility services that is not currently being realised.

140. Furthermore, a government report on the 2012 legacy for disabled people[49] found that disabled customers made more informed choices about their spending than the average consumer, based on reputation. One of the main reasons for switching to a competitor was the

[46] Cost Benefit Analysis, GMCA Research Team
[47] No health without mental health: A crossGovernment mental health outcomes strategy for people of all ages
[48] Study on the socio-economic impact of new measures to improve accessibility of goods and services for people with disabilities, Deloitte, 2014
[49] 2012 legacy for disabled people: Improving messages to SMEs: The case for the disabled customer

accessibility of their website, and for over 37%, good ‘disability aware’ service was the primary reason for choosing a business. The report concludes on a similar tone by saying that the financial benefits realised by accessible and inclusive businesses come from diversifying the customer base.

141. Therefore, making VoD services more accessible would have a benefit to businesses, as consumers who require accessibility provisions would be more willing to pay for a subscription, increasing businesses’ subscription and/or advertising revenue. However, it is possible that the additional revenue received may be lower than the cost of implementing these measures, and so businesses would not have made the decision to increase accessibility services without regulation. This is the nature of the market failure described in the rationale for intervention: the social benefit exceeds the private benefit of providing access services. It is important to note that although the additional revenue may be lower than the cost of implementing the measure, it would help reduce the strain on businesses and should become more cost-effective over time.

Summary

142. As outlined in the first section, given the uncertainties around the scope and impacts of this policy, the EANDCB and NPSV are illustrative only at this stage. However, this IA attempts to calculate these metrics based on our best estimate of the likely impacts. These are illustrative estimates, representing a maximum impact on the basis of a *status quo* counterfactual to provide an indication of the scale of impact. All impacts have been converted to 2020 prices for the EANDCB and NPSV, as is standard.

143. Total costs to business over the 10-year period are estimated to be £🎗. These costs will largely be borne by the Tier 1 VoD providers, which will be the largest services. At this time, it is not known exactly how many services will fall into Tier 1 as this will be determined by the Secretary of State following a review from Ofcom. The majority of this is the cost of making existing content meet the accessibility targets, followed by the costs of making new content meet the requirements. For comparison, total benefits to consumers (there are no monetised benefits to businesses) are estimated to be £15.0m. This is a result of full benefits only being applied from the four-year point at which businesses will meet the provision targets set, when in reality consumers will enjoy the benefit of additional accessible content at an earlier point. We have made an assumption on how businesses will change provision to meet interim targets, but we lack detail on how this will occur in reality. Therefore, the benefits are likely to be underestimated.

144. Costs are likely to be overestimated because they do not account for the additional accessibility services that businesses are likely to put in place despite this regulation. Trends show that businesses are increasing the proportion of content that is subtitled and audio-described, so it is likely that a large share of the cost of making new content accessible would be undertaken even in absence of regulation. In comparison, the evidence suggests that provision of signed content is not likely to increase without regulation. Also, some of the costs are expected to be recouped by providers in terms of additional subscription and/or advertising revenue if they attract more consumers with hearing and/or visual impairments. Furthermore, the share of cost that can be attributed to signed content is less than a quarter of the total cost, so these estimates are likely to be higher than the costs that businesses will incur in reality.

145. In addition, benefits are likely to be underestimated due to the assumptions made about VoD viewing habits relative to linear TV. As VoD gives viewers freedom to watch what they want, it is possible that benefits could be underestimated Therefore, we expect that the gap between costs and benefits will be smaller than indicated in this assessment.

146. In average annual cost terms, the difference between total costs and total benefits is less stark, with costs at £[redacted] per year and benefits at £1.8m. In terms of a simplistic switching value, we have estimated there to be approximately 3.4m consumers of VoD accessibility services. Each of them would need an average willingness to pay of £[redacted] a year (£[redacted] a month) for this measure for it to cancel out the annual cost to business.

147. The table below summarises the estimated impacts in 2022 prices:

Table 13: Summary of impacts (10 year PV)

Impact	**Value**
Familiarisation cost	£0.04m
Compliance/Set up cost for VoD providers	£[redacted]
Cost of making existing content meet the accessibility targets	£[redacted]
Cost of making new content meet the accessibility targets	£[redacted]
Benefit of additional subtitled content	£16.7m
Benefit of additional signed content	£1.7m

Business Impact Target Calculations

148. It is not possible to predict with certainty the actions of Ofcom or the steps businesses may take to ensure they are compliant with the regulation at this stage. Given that specific business requirements are unknown at this stage, the EANDCB calculated here is largely illustrative and aims to indicate the potential scale or nature of impacts of the whole policy (scenario 2 in the RPC's primary legislation guidance[50]). The illustrative EANDCB includes all monetised direct costs to business.

Table 14: Calculation of illustrative EANDCB

Net Present Social Value (NPSV)	£[redacted]
Equivalent Annual Net Direct Cost to Business (EANDCB)	£[redacted]

[50] RPC case histories – primary legislation IAs, August 2019

149. The NPSV is estimated to be **£✂** with an EANDCB of **£✂.** This EANDCB is illustrative only, representing a maximum impact based on a *status quo* counterfactual to provide an indication of the scale of impact. This is based on our best estimate of likely business requirements. It will be for Ofcom to decide on the specific requirements and set the tiers.

Sensitivity Analysis

150. Sensitivity analysis has been built in throughout this cost-benefit analysis. Although these values are only indicative, any impact assessments that follow will include detailed sensitivity analysis on the costs to business. Overall, the ranges are:

Table 15: Total Cost and Benefit Sensitivity Range (10 year PV)

	Central	**High**	**Low**
Total Cost	£✂	£✂	£✂
Total Benefit	£15.0m	£28.6m	£4.9m

Risks and assumptions

Assumption	**Evidence**	**Risk**
Ofcom will be able to enforce this regime of targets and exemptions, in terms of capability and the practicality of implementation.	The regulatory scheme is based on recommendations resulting from two consultations conducted by Ofcom itself, and involving industry stakeholders. Ofcom's recommendations aligned the design of the scheme with its existing implementation and enforcement of broadcasting access service requirements. Legislation has been drafted to align the video-on-demand requirements with the existing clauses already in place for broadcasting requirements. This suggests that Ofcom will have the capabilities to implement the scheme for video-on-demand services.	There is a risk that in practice it is more complex for Ofcom to administer the video-on-demand regulations than the broadcasting regulations. This is unlikely given that the preferred option is based on Ofcom's own recommendations and will mostly mirror the existing broadcasting scheme. Ofcom has also been given the flexibility to define much of the implementation framework in its own Code of Guidance, as is the case in broadcasting.
Video-on-demand providers will be able to meet the required targets within the given timeframes for delivery.	The targets are based on the two consultations conducted by Ofcom, which had input from industry stakeholders, including many of those that will be required to meet the targets. Many of these providers also have a certain level of access service provision in place, so will	There is a risk that Ofcom's exemptions framework doesn't work in practice and providers are unable to meet the targets set for them. This is unlikely given Ofcom's experience of implementing a successful exemptions framework for broadcasting access service

	simply be required to increase their provision rather than starting from scratch. The exemptions framework suggested by Ofcom means that providers will not be required to meet targets where it is not deemed to be feasible. Ofcom has experience of setting achievable targets and exemptions for broadcasters	requirements.
The suggested targets are required in order to ensure the provision of access services by video-on-demand providers.	Ofcom conducted two consultations on whether and how access service requirements should be put in place. In their second consultation in 2021, Ofcom found that there had been 'at best modest improvements' in the provision of access services by video-on-demand providers since their last consultation. Provision was not at this point at the recommended levels.	There is a risk that video-on-demand providers are already providing access services at the levels suggested for regulation. This is unlikely given previous modest voluntary improvements and continued calls for regulation by representative charities. If this is the case, the policy outcome would then be achieved regardless. Furthermore, this would mean that our costs are overestimates, which we already expect to be true.
Requirements on VoD accessibility will need to be fulfilled by applicable VoD services within a four-year period, with interim two-year targets set at half of the full target level to ensure progressive delivery.	Ofcom's 2021 report[51] sets out a four year timeline for ODPS to meet the targets for the proportion of content which is subtitled, audio-described or signed. This is based on their 2018 recommendations on accessibility.	Since Ofcom made these recommendations in 2018, there has been substantial improvement in provision, particularly for subtitles and audio description. It is also likely that provision of accessibility services has increased further since Ofcom last collected data. Therefore, there is a risk that Ofcom targets will be reduced to a shorter timeline. If this occurs, the policy outcome would be achieved on a shorter timeline than originally planned. This will mean higher costs for businesses over a shorter period as the transition period is condensed, meaning businesses cannot spread out the costs across as many years. However, the recent increases in provision mean that our estimated costs are likely to be an overestimate. Furthermore, if the timeline is brought forward,

[51] Further Statement: Making on-demand Services Accessible, Ofcom, 2021

		benefits to consumers will increase as provision will be at the target levels earlier.
ODPS providers and platforms prioritise the provision of accessibility services for their flagship and most popular shows	Evidence from providers on their approach to accessibility services, ensuring that flagship shows are covered and series are audio described for continuity.	Provision of some accessibility services is already at a high level; see page 22 for details of these costs for existing content. There is a risk that the cost of additional provision could exceed the value consumers place on that additional content, particularly for existing content on platforms. This risk is likely for subtitles, where provision is already high (given the assumptions made on consumer preferences on page 27). We have accounted for this risk in our sensitivity analysis by providing a range of values for costs and benefits; as well as a switching value to illustrate the required willingness to pay to offset the costs to business. However, it is less likely to occur for signing. This does not affect the policy outcome.

Unintended consequences

151. Increasing regulation needs to be proportional. Increases in costs to VoD services could have a detrimental impact on UK content choice, media plurality and investment in UK media and creative industries, or increase subscription/transaction charges. Similarly, as large SVoDs are global businesses, new regulation can lead to risks around decreased alignment of rules internationally, creating costs and knock-on impacts for these businesses that have to adapt products and services across multiple markets.

152. However, given the substantial subscriber base located in the UK, and the growing role of the UK in SVoD production, there will be economic incentives to comply, and disincentives to stop or reduce services in this country. There are also incentives for video-on-demand services to provide access services, given the significant numbers of people living with sight and/or hearing loss in the UK. The preferred option is designed to protect against most potential unintended consequences and costs:

- The exemptions framework to be implemented by Ofcom, alongside the linking of access service requirements to the Tier 1 enhanced regulation, will prevent small businesses from having to comply with these requirements. This will mean that there is no risk of small services from going out of businesses, which could be possible if they had to comply with the new regulation.
- Ofcom consulted with industry stakeholders to determine at what level the target requirements should be set, therefore receiving input directly from those that will be required to meet the targets in practice. The recommended video-on-demand targets were

also aligned with the existing broadcasting access service targets, suggesting that the levels chosen by Ofcom will be achievable and proportionate given that this level of accessibility is already being met by broadcasters.

- Given that Ofcom publicly consulted on the implementation of these measures, the video-on-demand industry is already aware of the Government intention to legislate to put access service requirements into place. Stakeholders are aware that Ofcom's recommendations will align the scheme with the existing targets already in place for broadcasters.

Steps to address evidence gaps

153. There is some uncertainty due to the fact that many of the details of the policy are to be set out by Ofcom at a future date in a Code of Guidance. This detail includes the specifics of the exemptions framework that will be used to determine what levels of access service need to be provided based on certain factors such as affordability and technical feasibility. The expectation is that this will be similar to the existing framework in place for broadcasters, as is set out in Ofcom's consultation responses and recommendations.

154. The new framework of target requirements for levels of access services will sit in the primary legislation. Ofcom will then implement the regime, and will need to set out the details on the rules and guidance, following some further consultation.

155. For this assessment of the scheme, the extensive engagement undertaken by Ofcom for their consultations was used to ascertain monetary estimates of impact. However, there were some gaps in the evidence collected as part of these consultations, including the lack of international video-on-demand services consulted by Ofcom, and the time elapsed since their publication may mean that there have been some changes in the landscape. Ofcom will be in a position to gather more evidence from a wider group of stakeholders when consulting on the development of their Code of Guidance, and will be able to consult further on the specific details of the regime to be implemented if necessary. Once legislation has finalised which providers will come under Tier 1 enhanced regulations, there will also be a clearer picture of exactly which services will be required to provide access services.

156. A further impact assessment will be produced alongside future secondary legislation when the tiers will be set. At this stage, it is likely that a more detailed quantitative assessment of the impacts of the regime will be able to be carried out, building on this assessment. DMCS will work with Ofcom at this stage to gather evidence for any impact assessment, and will use the evidence that Ofcom would have already gathered. This will increase understanding and enable a more thorough quantitative appraisal of the number of services in scope, allowing a more accurate estimation of costs to business.

3.0 Wider impacts

Small and Micro Business Assessment (SaMBA)

157. There are currently 125 notified ODPS providers currently regulated by Ofcom.[52] Ofcom identifies 26 UK services with >£50m annual revenues, and 9 services with between £10m & £50m revenues. Previously, we used companies with > £10m+ turnover as a proxy for the number of businesses in scope - noting that this is used for assessment purposes only and this is only one factor the Secretary of State could consider. This gives an estimated 35 businesses that are in scope, meaning that there are approximately 90 providers who are small and micro businesses.

158. The definition of small and micro businesses that we have used here comes from how Ofcom set their fee structure for ODPS.[53] 'Smaller ODPS providers', with an overall annual turnover less than £10 million pay no fees to Ofcom. Ofcom assess the size of ODPS providers using turnover rather than the number of employees because there are issues over allocation of time (e.g. for 'catch up' ODPS providers which also provide linear television, many employees are likely to be involved in both aspects to some degree). There is also a risk that an employee approach would not capture differences in business models, such as the extent to which ODPS procure content, rather than producing it in-house. Therefore, we would be unable to get accurate estimates of small and micro businesses if we were to use employment figures due to these being inconsistent and unreliable. Subsequently, the Ofcom methodology was determined to be the more accurate approach for estimating small and micro businesses within this analysis. This definition is used in the Ofcom report which our analysis has built on, and which provides the basis for the exemptions framework for small businesses in Ofcom's enforcement of the accessibility requirements.[54] Hence, we have used the same threshold to define small (and micro) businesses to align to how Ofcom will determine scope.

159. In our estimation of familiarisation costs, we conservatively assumed that all VoD services that target UK audiences will require a legal employee to read the regulation and understand whether it has implications on the firm. This means that there is a cost to small businesses, estimated to be £4,665.60 if there are 90 small and micro ODPS providers - approximately £50 per business. This is in proportion to the £6,480 total familiarisation cost for all businesses, as small businesses comprise around 72% of all ODPS providers regulated by Ofcom.

160. Small and micro businesses are not expected to incur any additional costs, as these requirements will only apply to Tier 1 organisations.

161. This legislation will align VoD accessibility requirements with enhanced VoD regulation, requiring those services defined as Tier 1 to meet access service targets, and therefore ensuring large TV-like services come under these provisions.

162. The enhanced regulation consultation and stakeholder engagement explored whether smaller providers should or could be able to conform to enhanced rules and standards and therefore be defined as Tier 1 services. Whilst the argument could be made that all VoD should

[52] Ofcom, List of on-demand programme service (ODPS) providers currently regulated by Ofcom, October 2022

[53] https://www.ofcom.org.uk/__data/assets/pdf_file/0017/101582/vod-fees-statement.pdf

[54] https://www.ofcom.org.uk/__data/assets/pdf_file/0026/221768/Further-Statement-Making-on-demand-services-accessible.pdf

be regulated equally, engagement with the VoD industry (through direct engagement and consultation responses) and Ofcom, suggests that a large number of smaller VoD providers would find it difficult (if not impossible) to profitably adhere to broadcasting style rules under their current business models and therefore would be forced to shut down. There was overarching feedback that many smaller providers would have to close their services as a result of the increased costs arising from the regime changes, and that, due to smaller audience sizes and content being 'un-TV-like', the risk to audiences was smaller.

163. As a result of this evidence, it was determined that a two-tier approach will be implemented, with larger, TV-like services being designated as Tier 1 services. Under the two-tier approach, small or micro businesses are not expected to fall in scope of the Tier 1 regime unless they are deemed at risk of providing substantive harm to audiences. The design of the tiered system to include only larger, TV-like services under Tier 1 aligns with the Government's policy position aiming to align regulation of TV-like video-on-demand services with broadcasting regulation where practical and proportionate. It is therefore not anticipated that the exclusion of small and micro-businesses will have any impact on competition in relation to the provision of access services, as the kinds of service delivered by larger video-on-demand services and small and micro-businesses are different and therefore they are not in direct competition. The large services that will come under Tier 1 are those competing instead with the large linear broadcasters for audiences. The framework has been designed so that all those competing as large TV-like services will come under the access service requirements.

164. Ofcom's analysis suggests that providers which are not small companies provide around 90% of total hours of content across on-demand programme services (ODPS). To ensure certainty and proportionality for the long-tail of small providers, while capturing the large providers offering the majority of on-demand content, there will be a system of exemptions. The exemptions framework suggested by Ofcom includes exemptions based on technical or operational obstacles, low audience size and disproportionate cost, meaning that providers will not be required to meet targets where it is not deemed to be feasible.

165. Ofcom's consultations on VoD accessibility also took affordability into account as one of the key aspects of the exemptions framework to be included as part of new access service requirements. Ofcom's recommendations on cost of implementation not totalling more than 1% of a company's turnover will work to ensure that any smaller services that do come under Tier 1 requirements (e.g. on the grounds of potential for harm to audiences) will be exempt from implementing access service requirements. Ofcom also considered that audience benefit should be taken into account when determining exemptions to requirements, meaning that "access services should not be required in cases where it will result in benefit to only a small number of people"[55]. As such, it is anticipated that the system of exemptions based on the grounds of affordability and audience benefit will exclude any small and micro businesses from these requirements.

Medium-sized business assessment

166. As set out above, the policy intention is for only large, TV-like video-on-demand services to come under Tier 1 enhanced regulation, and therefore be required to adhere to access service targets. We anticipate that the services defined as Tier 1 are unlikely to include any medium-sized businesses with up to 499 employees. However, the exact services in scope of enhanced

[55] Further Statement: Making on-demand Services Accessible, Ofcom, 2021

regulatory requirements will be determined following a review of the market by Ofcom and then set out by the Secretary of State in secondary legislation. At this point a further assessment can be conducted to consider whether the policy will impact any medium-sized businesses, but the intention is that this would not be the case. Furthermore, as set out above, even if any medium-sized businesses are required to come under enhanced Tier 1 regulation, Ofcom's exemptions framework is designed to exclude relatively smaller services due to size-related factors such as limited audience benefit and disproportionate cost. As such, we do not anticipate that any medium-sized businesses will be impacted by this policy.

Equality impacts

167. In both of their consultation responses, Ofcom produced an Equality Impact Assessment, to assess the potential impact of this policy on the following equality groups: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. Ofcom found that the proposals set out in their consultation responses for the implementation of this policy are unlikely to have a detrimental impact on any of the relevant equality groups, including people with disabilities and older people. In particular, Ofcom suggested that the proposed form of the regulations should lead to measurable progress in both the quality and quantity of access services.

168. Ofcom's Equality Impact Assessment found that their recommended system of exemptions will only apply in cases where meeting the full requirements would disproportionately impact video-on-demand providers, and these will likely only apply in a limited number of circumstances. Ofcom therefore do not expect that these exemptions will lead to a significant reduction in benefit to the equality groups. Recommendations on signing requirements to allow contribution to an approved provider of sign-presented programming were designed to allow signing users preferences to be taken into account, and Ofcom therefore finds that this provision should increase the benefits to sign-language users.

169. Overall, Ofcom's Equality Impact Assessment found that this policy will have implications for those with disabilities, people whose age-related conditions may make them more vulnerable, and people belonging to the other equality groups to the extent that they use access services for reasons other than sight or hearing impairment. The intention is that this policy will increase access to video-on-demand services to these groups by bringing about progress in the amount and choice of accessible on-demand content. This will result in increased inclusion for the relevant equality groups and reduce frustrations caused by the current lack of accessibility of on-demand content.

Trade implications

170. This policy will implement new requirements for video-on-demand services to provide a certain level of subtitles, audio description, and signing. This could increase the demands on services to provide more access services than is currently the case, therefore increasing the burden and cost of their provision. We also intend to link access service requirements with the new enhanced regulation scheme for video-on-demand services, where services designated as Tier 1 will be required to adhere to more stringent content regulation standards. The Tier 1 regime will include services that are defined as 'large TV-like' services, and it is anticipated that this will include some non-UK based services. The new provisions for top-tier regulation will not introduce different requirements for domestic businesses compared to businesses from

different foreign countries. The Tier 1 will be determined by measurements that could include size of UK audience or UK turnover - rather than location of business.

171. This measure could have the potential to impact on the imports or exports of a specific good or service. Specifically, a small number of Tier 1 overseas VoD services will come in scope of the new Tier 1 VoD regulation regime, and therefore come under the new access services requirements. However, as set out above, policy design and work with Ofcom has taken place to ensure that the new measures are proportionate. Ofcom's recommendations for implementation set out how they will consider an exemptions framework for the access service requirements, and will make exemptions based on audience benefit, affordability, and technical difficulty. Consideration of these factors means that the full requirements will only be in place for services where fulfilling them would not be unnecessarily burdensome and will not have a detrimental impact to the business. For example, Ofcom suggests that providers would not be obliged to provide access services where there is a cost of more than 1% of a provider's overall turnover. Due to these measures and consideration of proportionality throughout the design of the implementation, we do not anticipate that this policy will have a significant impact on video-on-demand providers and therefore will not have any significant implications for trade. It is also worth noting that many video-on-demand providers already have a certain level of access services on their service and therefore will not be starting from scratch when aiming to meet the newly implemented targets.

172. In theory, if the regime is overly prescriptive and Ofcom's exemptions framework does not work in practice to adjust requirements based on factors like affordability, then costs could be significant. This could theoretically result in higher product prices, or other implications that could lead to reduced trade. However, as set out above, we do not expect this to be the case. Therefore this regulation is not expected to have an impact on international trade and investment.

Competition

173. The competition checklist set out in the Competition and Market Authority's (CMA) "competition assessment checklist" guidance[56] has been used to consider the impact of this policy on competition in the market:

- *Will the measure directly or indirectly limit the number or range of suppliers?* This measure will not directly limit the number or range of suppliers. The impacts of the video-on-demand access services regime are unlikely to be large enough to indirectly lead to suppliers dropping out of the market, or block entrants to the market. During Ofcom's two consultations and DCMS' engagement with stakeholders, no large firms provided evidence that these requirements could result in them leaving the market. Ofcom's consultations on the implementation of these measures specifically took proportionality into account, and recommended the exclusion of small businesses through exemptions based on the grounds of audience benefit and cost. This means that small firms are unlikely to be within scope of the new regime and will continue to operate as usual, with no additional accessibility requirements.
- *Will the measure limit the ability of suppliers to compete?* The new requirements will not put an unnecessary or disproportionate burden on suppliers. The cost of implementation will be limited to a maximum of 1% of a supplier's turnover and

[56] Competition impact assessment, CMA 2015

requirements being in place will be dependent on there being sufficient audience benefit from delivery. The implementation of an exemptions framework will mean that requirements will be proportionate to a firm's size and ability to adhere to the target levels of provision. The requirements will therefore not be overly burdensome for those required to implement them. The new access services regime will be the same for all large video-on-demand services in competing markets within the UK, and therefore will not provide particular firms with strategic advantages, or limit any one firm's ability to compete.

- *Will the measure limit the suppliers' incentives to compete vigorously?* As set out above, all larger TV-like services will be designated as Tier 1, and therefore come under new access service requirements. The requirements will therefore not impact on incentives to compete as all providers competing at this level of provision will come under the same requirements. The provisions will in fact potentially open new consumers to the providers as they become more inclusive and accessible as a result. This could therefore even increase providers' incentives to compete vigorously as they improve their service provision and audience benefit.
- *Will the measure limit the choices and information available to consumers?* Under the preferred option, the new requirements are expected to have a positive impact on the audience viewing experience. Consumers will be able to engage with a more accessible product, and those with disabilities will have greater choice over which video-on-demand services they can use as a result. The regulations will also mean that consumers have more information about which services provide access services so they can make more informed decisions about which video-on-demand services to subscribe to and use to access content. As set out above, it is unlikely that the costs of implementation will be large due to the focus on larger TV-like services, and therefore unlikely that any costs will be passed on to consumers. It is therefore not expected that consumer choice will be limited as a result of increased costs due to the requirements.

174. Therefore, as per the CMA's guidance, an in-depth competition assessment would be disproportionate for this measure. Particularly as elements of the enhanced regulation are to be determined by Ofcom, following implementation of primary legislation.

4.0 Post Implementation Review/Monitoring and Evaluation Plan

175. As set out in the ‘steps to address evidence gaps’ section, more analysis will be done to increase understanding and enable a more thorough quantitative appraisal of the key impacts of these targets, to inform a further IA alongside the necessary secondary legislation.

176. Following the implementation of the legislation, Ofcom will lead on monitoring and evaluation, as with the wider VoD regulation programme. The proposed regulatory changes will be implemented following a period of further consultation from Ofcom (as set out earlier in this assessment) to inform the development of their Code of Guidance to set out the specifics of how providers should implement the requirements and the exemptions framework. Ofcom, as an ongoing function (and legislative duty), will ensure that it carries out its regulatory functions in an effective and proportional manner. As an independent regulator, Ofcom will undertake its own comprehensive monitoring and evaluations (subject to parliamentary oversight) as it currently does under existing video-on-demand regulation.

177. Ofcom will be specifically tasked with reviewing and revising their Code to ensure that it remains up to date and relevant, and considers any shifts in the landscape that may impact the ability of providers to deliver access services. Within the provisions, services will also be required to report annually to Ofcom on the extent to which and how they have met the requirements, and on their plans to continuously and progressively make their services more accessible. Ofcom will use these reports to continually monitor delivery and the extent to which the requirements are being met by services. Ofcom will be given the necessary powers to collect data to carry out its regulatory functions, including reviewing the effectiveness of the policy.

178. DCMS will consider the implementation and effect of VoD access services regulatory changes on an ongoing basis, including considering whether a formal PIR should take place within the appropriate boundaries of Ofcom’s regulatory independence, and without duplicating the work of Ofcom. Accounting for the length of time for implementation and an appropriate period for the new rules and regulation to settle, a formal PIR is unlikely to be considered before 2028.