

Video-on-demand accessibility

Lead department	Department for Culture, Media & Sport
Summary of proposal	The proposals would see requirements on video-on-demand (VoD) providers, to ensure that target percentage of their content was available with subtitling, audio-description and signing.
Submission type	Impact assessment (IA) – 16 March 2023
Legislation type	Primary legislation
Implementation date	tbc
Policy stage	Final
RPC reference	RPC-DCMS-5152(2)
Opinion type	Formal
Date of issue	11 April 2023

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The Department has assessed the impacts of the policy in line with Scenario 2 as outlined in the RPC guidance on IAs for primary legislation ² . Therefore, the IA does not include an EANDCB for validation at this stage. The IA includes a sufficient qualitative assessment of the expected areas of impact, including those upon small and micro businesses (SMBs), as well as discussion of the wider impacts of the policy. The IA is missing a clear monitoring and evaluation (M&E) plan, with Department delegating responsibility for this to Ofcom (the regulator).

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying provision	Qualifying provision
Equivalent annual net direct cost to business (EANDCB)	NQ	NQ
Business impact target (BIT) score	NQ	Further quantification to be made in future IA(s) to be submitted.

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

² RPC guidance on primary legislation IAs - <https://www.gov.uk/government/publications/rpc-case-histories-primary-legislation-ias-august-2019>

Business net present value	NQ
Overall net present value	NQ

RPC summary

Category	Quality³	RPC comments
EANDCB	Green	The Department has provided an appropriate assessment of the impacts of the measure, undertaking a scenario 2 assessment at this time. The IA discusses a good range of impacts upon businesses and the public sector, as well as including a sufficient level of indicative quantification.
Small and micro business assessment (SaMBA)	Green	The IA discusses how the policy has been designed as such to place the responsibility for delivering the new requirements upon those businesses defined as tier 1 (which are only expected to be larger firms). Therefore, SMBs are unlikely to be captured by the requirements. The IA would be improved by providing a clear indication of the number of SMBs who operate in the affected sectors.
Rationale and options	Weak	The IA needs to strengthen its discussion of why the market cannot achieve the desired objectives without intervention, and specifically to explore whether the accessibility targets might be achieved absent regulation. In addition, the Department should consider whether newer content is more likely to be accessible and whether this otherwise would have meant a natural trend towards the percentage levels being set.
Cost-benefit analysis	Satisfactory	The indicative analysis included at this stage is clearly set out and explained. The IA would be improved through strengthening the evidence base and assumptions, ahead of secondary to allow the validation of the EANDCB.
Wider impacts	Satisfactory	The IA includes a good assessment of the wider impacts, covering trade and competition impacts, but should be improved by also considering the regional impacts, as well as innovation.
Monitoring and evaluation plan	Weak	The Department does not commit to undertaking a post-implementation review (PIR) for the policy, nor do they set out a clear M&E plan. It is stated that Ofcom will be responsible for M&E; however, even with this being the case, the IA needs to provide more detail of what the Department will want Ofcom to assess as part of this activity.

³ The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

Summary of proposal

The viewing habits of the UK public are continually changing, with there being a clear shift of viewership away from traditional linear broadcasting and towards other means of consuming TV. One such medium is through VoD, which at present does not face many of the same regulatory requirements as linear broadcasting. To ensure that VoD content continues to be accessible to as many of the population as possible, the Department are seeking to introduce legislation that will set targets for how much of a given provider's VoD content must be accessible. In the IA, the Department discuss two options:

- **Option 0:** *Do nothing* - Continue to have no targets for accessibility provisions; and
- **Option 1:** *Preferred option* - Introduce specific targets for video-on-demand services to provide certain levels of access services (which mirror those in place for linear broadcasting) across their catalogue of content and introduce reporting requirements⁴.

The main costs are identified as being the initial familiarisation and transition costs (of developing appropriate technologies to ensure provision) for businesses, as well as initial costs for Ofcom (as the regulator) to also familiarise themselves and establishing enforcement practices. There are also on-going costs, both for business and Ofcom, relating to continued compliance with the new requirements and their enforcement respectively. Meanwhile the main benefits discussed in the IA are the increased range of accessible content for consumers, as well as the associated benefits (e.g., health and societal) that accompanies the increased rate of provision. As the Department has undertaken a scenario 2 assessment, no EANDCB figure has been provided for validation at this stage. Further IAs are to be produced for the necessary secondary legislation.

EANDCB

Direct and indirect impact(s)

The Department has provided a sufficient indicative assessment of the scale of the impact of the proposals, representing a scenario 2 assessment, as set out in RPC guidance. Furthermore, the IA does well to provide an early indication of the likely direct and indirect impacts of the proposals. The Department should ensure that when undertaking any IAs for future secondary legislation, that all impacts (in particular those upon business) are appropriately classified as direct and indirect, in accordance with RPC guidance, to enable an EANDCB to be verified.

Non-monetised impact(s)

⁴ Require that video-on-demand services offer subtitles 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.

The IA includes an adequate discussion of potential non-monetised impacts, in particular benefits, providing additional context for the proposal. The Department do well to include consideration of both the non-monetised benefits to both consumers and business, with quality adjusted life years (QALYs) being discussed for the former. The Department should seek to strengthen their understanding of the policy and the evidence base relating to these impacts to enable them to be fully monetised when undertaking analysis of future secondary legislation.

Counterfactual/baseline

The Department has included a good degree of evidence, setting out the current state of the VoD market, including the main providers, the types of content and the trends in the provision of accessible content. However, while the Department note that the current trends (of increasing rates of accessible content) may in part be due to the policy covered in this legislation being in development for some time, the IA would benefit from attempting to disaggregate the impact of this from any prior trend and the incentives that content providers might have to improve accessibility absent regulation in the future. In addition, the IA should consider whether there may be a recency bias with respect to VoD content being more or less likely to be accessible when first made available. For example, it would appear likely that programming made this year would be more likely to have accessibility considered as part of its development, than historic content already produced. If this case, as newer VoD content is created, the percentage that is accessible may naturally grow towards the target levels set out in the current measures. The IA would benefit further from considering whether all potential forms of VoD content have been considered and whether this may introduce new potential impacts or simply represents an increase in the likely scale of costs and benefits that may occur.

Future assessment

The Department stated that a further IA will be produced, as appropriate, for any related secondary legislation. The RPC would expect to see more detailed and developed qualitative and quantitative cost-benefit analyses in any IAs accompanying the relevant secondary legislation. The RPC would welcome any discussion with the Department prior to the submission of IAs produced to accompany future secondary legislation.

SaMBA

Scope

The IA includes a sufficient level of discussion of the impacts to SMBs. While SMBs are not expected to be impacted, the IA would be improved if the Department were to attempt to establish the presence of SMB providers, to give a clearer indication of the role in which they play in the sector. In addition the RPC notes that the IA clearly states that the obligations are placed on the VoD provider. However, the IA would benefit from exploring the possibility that a provider may pass this obligation on to a content producer for example, as a contractual condition. If so, and if there is a

significant fixed cost in setting up accessibility services, then this could have a disproportionate effect on smaller content providers.

Exemption and mitigation

The Department clearly set out how, the design of the preferred option is such that SMBs would not be in scope of the requirements. With the usage of tiers to classify and set requirements for VoD providers, only the largest businesses providing the most content will be subject to the new targets.

Medium sized business (MSB) exemption

In addition to the consideration of impacts upon SMBs, the Department has included some discussion on the potential impacts to MSBs. Similar to as noted above for SMBs, the IA would be improved by attempting to establish the presence of MSB providers, to give a clearer indication of the role in which they play in the sector.

Rationale and options

Rationale

While the Department does well to set out the market failures, associated with the insufficient provision of fully accessible content, the IA does not make a clear case for why regulatory intervention is necessary. The Department does not provide a strong case for intervention for the 'VoD accessibility' proposal, failing to sufficiently explain why businesses would not move towards providing the levels of accessibility being proposed, without the need for regulatory intervention. For example, the IA does not consider whether, given it is established that consumers (generally, in addition to those with accessibility needs) are willing to pay for accessible content, that providers would not seek to capitalise on this potential additional revenue. The IA must provide further analysis and evidence to establish why regulatory intervention is necessary, given the current trends in the rate of provision, as well as considering in more detail the changes to programming (e.g., quieter dialogue) and consumption patterns (e.g., those watching VoD content while commuting) making accessibility more important for consumers.

Options

The IA does not include a non-regulatory option for consideration. While the Department does reference the views of Ofcom, in relation to voluntary solutions not being viable, the IA does not elaborate on why this is the case, nor does it address what alternative actions could be used to support current voluntary compliance.

Cost-benefit analysis

Evidence and data

The IA draws upon a range of evidence sources to inform both the qualitative consideration of impacts, as well as the indicative analysis included to support the

IA. The Department should seek to ensure that the evidence base is strengthened where appropriate, to better enable to the quantification of as many impacts of future secondary legislation.

Assumptions, risk and sensitivity

The Department does well to identify a list of key assumptions, setting out the evidence informing them and the potential risks of the position considered in each. However, the IA could be improved by ensuring that all assumptions, in particular those used in the analysis informing the indicative EANDCB provided, are supported by robust evidence. For example, it is not clear where the assumptions informing familiarisation time for businesses originate, meanwhile in Table 10, which covers the inputs to the cost of ensuring new content is accessible, the IA references Departmental estimates without providing justification for their appropriateness and usage. The Department should ensure that all assumptions that inform monetised impacts informing future EANDCB figures for validation, are fully supported by evidence, when producing any IA(s) to accompany secondary legislation.

The IA also includes an array of sensitivity analysis on a variety of impacts considered. While useful, and the RPC welcomes its inclusion, the sensitivity analysis would be improved if the Department were to utilise likely variations in the specific variables, illustrating realistic uncertainty, as opposed to standard +/- percentage adjustments.

Wider impacts

Innovation

The IA should have discussed the impact upon innovation of the policy. The Department should consider whether the new requirements will lead to advancements in the quality of accessibility technology, therefore improving the quality of programming for those with accessibility needs, as well as potentially being easier for providers to meet the target requirements.

Competition

The Department includes a consideration of the impact upon competition in affected sectors, drawing upon the Competition and Market Authority's (CMA's) assessment checklist to inform the discussion. With the objectives of the policy relating to consumer accessibility, the IA does consider the impact to consumer choice. This would be strengthened by considering whether providers may reduce the amount of programming as a means of meeting the required accessibility targets, and whether there is a risk that the regulation could impose disproportionate costs on smaller content providers, thus acting to protect larger providers from competition.

International trade and investment

The IA includes a discussion of the potential impact upon international trade of the policy. However, the IA would be improved by also discussing the potential impact on investment.

Distributional/regional

The IA has not discussed whether there will be any distributional or regional impact of the policy. For example, the IA should consider whether any specific region of the UK stands to be disproportionately impacted than others, including considering impacts on regional broadcasters and businesses who produce content for regional markets.

Monitoring and evaluation plan

The Department does not commit to undertaking a PIR for the policy, instead stating that Ofcom, the regulator, will be responsible for evaluating the policy. The IA explains that the necessary monitoring, and resulting evaluation, will align with Ofcom's current practices. The IA needs to discuss how the specific aspects of this policy, and its effectiveness will be assessed and attributed to this intervention.

Additionally, the Department should consider whether an increase in the M&E requirements for Ofcom will impact on their ability to conduct both the evaluation of this policy, and existing ones which Ofcom may be assessing, if resources remain constant.

Regulatory Policy Committee

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