

**August 2024**

NDA Submission to Coimisiún na Meán concerning the Draft Access Rules for Television Broadcasting Services

# Introduction

The National Disability Authority (NDA) is the independent statutory body with a duty to provide information and advice to the Government on policy and practice relevant to the lives of persons with disabilities, and to promote Universal Design. The NDA welcomes the opportunity to input into Coimisiún na Meán’s (‘the Commission’) consultation concerning the Draft Access Rules for Television Broadcasting Services (‘Draft Access Rules’).

The NDA has consistently advised that access requirements should be met through a progressive and continuous process, while considering the practical and unavoidable constraints that could prevent full accessibility, such as programmes or events broadcast in real time. Our approach is akin to that required by the Audiovisual Media Services Directive, which requires EU Member States, including Ireland, to ensure that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures.

While the NDA has provided detailed responses to the consultation questions below, we also wish to underline the importance of broadcasters meeting not just quantitative and temporal targets, but also qualitative targets designed to improve the quality of access services. The NDA is aware that the quality of access services varies across different broadcasters and that access users[[1]](#footnote-1) have expressed the view that the figures supplied by broadcasters about meeting qualitative targets are inaccurate given the many quality-related issues that persist. The NDA therefore advises greater attention to strengthening the monitoring of the quality of access services[[2]](#footnote-2) within the Draft Access Rules, including enhanced qualitative monitoring by Coimisiún na Meán, with the participation of access users.

# Responses to Consultation Questions

## Question 1: Do you have any comments on the proposed changes to the introductory sections of the Access Rules?

### UN Convention on the Rights of Persons with Disabilities

The NDA notes the absence of a reference to the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in Section 1.1 and advises that this be remedied. As the UNCRPD has been ratified by Ireland, the NDA advises that the Draft Access Rules should be guided by and adhere to the Convention.

Article 30 of the UNCRPD specifically obliges States Parties, including Ireland, to recognise the right of persons with disabilities to take part on an equal basis with others in cultural life, and to take all appropriate measures to ensure that persons with disabilities enjoy access to television programmes in accessible formats.[[3]](#footnote-3) In addition, Article 21 of the Convention enshrines the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

Furthermore, the changes proposed in the Draft Access Rules are principally informed by the need to fully transpose the Audiovisual Media Services Directive into Irish law.[[4]](#footnote-4) The European Union has ratified the UNCRPD and accordingly all EU law, including Directives, must be interpreted in a manner consistent with the Convention. Recital 22 of the Directive also explicitly states the following: ‘Ensuring the accessibility of audiovisual content is an essential requirement in the context of the commitments taken under the United Nations Convention on the Rights of Persons with Disabilities.’

### European Accessibility Act

The NDA also notes that there is no reference to the European Accessibility Act in Section 1.1 and advises that this be remedied. The European Accessibility Act (EAA) (Directive EU 2019/882) is a directive that aims to improve the functioning of the internal market for accessible products and services, by removing barriers created by divergent rules in Member States. These products include equipment related to digital television services and access to audio-visual media services such as television broadcast and related consumer equipment. The EAA was transposed into Irish law via Statutory Instrument (S.I.) 636/2023.

The NDA considers the EAA and the Audiovisual Media Services Directive to be complementary, a view echoed in the European Commission report examining the application of the Audiovisual Media Services Directive during the period between 2019 and 2022. The definition of ‘audiovisual services’ is the same in both Directives, further reinforcing this alignment.

As outlined in S.I. 636/2023, accessibility requirements for services providing access to an audiovisual media service must be achieved by ‘providing EPGs [Electronic Programming Guides] which are perceivable, operable, understandable and robust and provide information about the availability of accessibility’ (Schedule I, Section 4, (b)(i)); and ‘ensuring that the accessibility components (access services) of the audiovisual media services, such as subtitles for the deaf and hard of hearing, audio description, spoken subtitles and sign language interpretation, are fully transmitted with adequate quality for accurate display, and synchronised with sound and video, while allowing for user control of their display and use.’ (Schedule I, Section 4, (b)(ii)).

As the designated compliance authority for services providing access to audiovisual media services under S.I. 636/2023, the Commission must ensure that the services provided by broadcasters, who are considered ‘economic operators’ under the EAA definition, meet the accessibility requirements detailed in Schedule 1 of S.I. 636.

### Accessible Complaints Mechanism

The NDA welcomes the establishment by the Commission of a Contact Centre for handling complaints related to accessibility. This measure seeks to give effect to Article 7(4) of the Audiovisual Media Services Directive, which requires each EU Member State ‘to designate a single, easily accessible, including by persons with disabilities, and publicly available online point of contact for providing information and receiving complaints regarding any accessibility issues.’

The NDA notes that there are two options to communicate with the Contact Centre, either by phone or email (Section 1.4). However, the NDA advises that these forms of contact may not be accessible to Irish Sign Language (ISL) users, particularly given the low literacy levels of some ISL users. One of the issues identified in the NDA review of the operation of the Irish Sign Language Act 2017 (‘ISL Act 2017’ or ‘2017 Act’) was the inaccessibility of complaints mechanisms to ISL users.

Complaints processes are an essential part of service provision, business improvement and quality assurance. The NDA review of the 2017 Act concluded that the absence of an accessible complaint mechanism for ISL users should be remedied promptly by providing a two-way mechanism where ISL users can make a complaint or submit feedback in ISL on any matter, and receive appropriate responses through ISL. The NDA therefore advises that the Contact Centre consider ways of making their complaints and information services accessible to ISL users.

## Question 2: Do you have any comments on the proposed changes to the Definitions section of the Access Rules?

### Disability Language and Terminology

The NDA notes the proposal to replace the term ‘partial sighted’ in the definition of ‘Audio Description’ with the term ‘vision impaired’. The NDA wishes to draw the Commission’s attention to an advice paper on disability language and terminology we produced which provides practical guidance for Departments and public bodies on the use of language when speaking and writing about disability.[[5]](#footnote-5) As set out in our advice paper, the term ‘person with a vision impairment’ can refer to someone with no vision or with some vision, while the term ‘partially sighted’ refers to a person who has some vision. The NDA therefore welcomes this change in language and advises that there may be other advice in that paper that may be useful to Coimisiún na Meán.

### Minimum Targets

The NDA advises that Section 2 be amended to state that the targets stipulated within the Draft Access Rules represent minimum obligations. In this regard, the NDA wishes to draw the Commission’s attention to Section 4.5 of Ofcom’s Code on Television Access Services, updated this year, which contains the following statement: ‘The targets represent minimum obligations and apply on a rolling basis from each anniversary of the applicable date onwards for each service in question.’

## Question 3: Do you have any comments on the proposed changes to the General Rules Applying to All Access Provision section of the Access Rules?

### Quality Standards

Section 4.1 of the Draft Access Rules recognise that ‘maintaining quality access provision is essential for ensuring that audiences using these services benefit from them.’ However, broadcasters are obligated to monitor content to ensure quality standards are met, rather than Coimisiún na Meán. The NDA advises that Coimisiún na Meán considers strengthening this aspect of the Draft Access Rules, in particular by considering how the Commission itself can enhance monitoring of qualitative ISL, Audio Description and subtitling targets.

### Emergency Information in ISL

The NDA welcomes the proposed introduction in Section 4.2 of a new requirement that broadcasters must provide emergency information in Irish Sign Language. The COVID-19 pandemic highlighted the necessity of ensuring all emergency broadcasts and public health information are provided in an accessible format, including live subtitling and ISL.

This measure is also mandated by Article 7(5) of the Audiovisual Media Services Directive, which requires EU Member States to ensure that emergency information, including public communications and announcements in natural disaster situations, which is made available to the public through audiovisual media services, is provided in a manner which is accessible to persons with disabilities.

### Promotion of Access Provision

The NDA welcomes the changes proposed in Section 4.3 relating to the Promotion of Access Provision by broadcasters, including the deletion of the caveat under the 2019 Access Rules that the obligation to indicate in listings the programmes for which access provision is available applies “except where it is not possible to do so and where this can be clearly demonstrated”. We also note that access users consulted as part of the Statutory Review outlined their frustration that broadcasters did not sufficiently promote Audio Description provision and recommend particular attention to this issue.

In line with the European Accessibility Act, the NDA advises that Section 4.3 be amended to require broadcasters to promote awareness of the availability of their access services by making available accurate and timely information to electronic programme guide (EPG) operators listing their services, and by providing similar information on their own website and app listings. In this regard, the NDA notes that broadcasters consulted as part of the 2023 statutory review on the 2019 Access Rules (‘the Statutory Review’) highlighted their efforts to promote access service availability via on-screen symbols, EPGs and websites.

Furthermore, the NDA advises that Section 4.3 be amended to encourage broadcasters, where unforeseen circumstances mean that scheduled access services are not available, to take steps to ensure that updated information is provided to EPG operators and that audiences are given timely information on availability by appropriate and effective means. The Commission may find Section 6.3 of Ofcom’s 2024 Code on Television Access Services instructive in this regard.

### Obligation to Consult with Access Users

The NDA advises that the obligation to consult with access users in Section 4.4 should include engagement on the development, implementation and monitoring of the annual accessibility action plans provided for in Section 4.5. We would further recommend that there is a specific reference to consultation with Disabled Persons’ Organisations (DPOs). The UNCRPD is clear that DPOs, as representative organisations of disabled people, must be closely consulted with and actively involved in decision making processes concerning issues related to people with disabilities.

### Annual Accessibility Action Plans

The NDA welcomes the proposal in Section 4.5 to require broadcasters to develop an annual ‘accessibility action plan’, which will detail how the broadcaster intends to progressively make their services more accessible to persons with disabilities and meet their obligations under the Access Rules. This proposal is also recommended by Article 7.3 of the Audiovisual Media Services Directive.

In addition to outlining how the broadcaster intends to meet targets for the provision of access services under the Access Rules, the NDA advises that these accessibility action plans should also detail the ways the broadcaster intends to improve the quality of the access services and how they will monitor content to ensure quality standards are met. The NDA further advises that Section 4.5 be amended to expressly state that the annual accessibility action plans are made publicly available in accessible formats.

## Question 4: What are your views on the targets proposed for subtitling for the 2025 to 2027 period?

The NDA welcomes the introduction of three-year targets (across the subtitling, ISL and Audio Description targets), as opposed to the five-year period under the 2019 Access Rules. We agree with the Commission that this shorter period is still long enough to facilitate forward planning by broadcasters, while recognising that a five-year timeframe may no longer be appropriate given the pace of change in media and technology.

The NDA welcomes the targets proposed for subtitling for the 2025–2027 period, which generally adhere to the requirement under the Audiovisual Media Services Directive that broadcasters continuously and progressively make their services more accessible to persons with disabilities through proportionate measures. However, while noting that the 96% subtitling target for RTÉ1 is high, this proposed target remains static for the three-year period. The NDA suggests there may be scope for a small but incremental increase in this target over the relevant timeframe.

The NDA further notes that the 2023/2024 subtitling target for Oireachtas TV is 18%, while the 2025 target is 17%. This target does not align with the requirement to progressively improve services.

## Question 5: Do you have any further comments on the proposed changes to the Subtitling Rules section of the Access Rules?

While recognising the efforts of the Commission and broadcasters, the NDA advises that an increase in subtitling targets must also be accompanied by improved quality of subtitling. The Statutory Review highlighted that access users consider that significant levels of subtitling provision are not of an appropriate standard, with this being particularly evident for live programming. The Statutory Review further noted that while some access users are encouraged by the increased quantity of subtitling, the majority felt that the absence of a comparable level of improvement in the quality of subtitles can make the additional quantities immaterial.

## Question 6: What are your views on the proposed targets for ISL for the 2025 to 2027 period?

The NDA notes that the Statutory Review found that targets for Irish Sign Language remain modest and there continues to be scope to increase these levels. The proposed targets for ISL for the 2025 to 2027 period broadly represent incremental progress in line with the NDA’s advice that accessibility requirements should be met through a progressive and continuous process. However, we note that the 2023/2024 ISL target of 2% for Virgin Media 1 remains the same for 2025.

## Question 7: What is your view on the change to the assessment of ISL targets based on an 18-hour day, from 7am to 1am?

Section 8 of the Irish Sign Language Act 2017 requires broadcasters in fulfilling their obligations in relation to ISL targets and requirements in respect of programmes to adhere to principles of equality, dignity and respect in terms of the promotion and broadcasting of such programmes.

The NDA review on the operation of the ISL Act 2017 found that the principles of equality, dignity and respect were not adhered to in broadcasting programmes with ISL when fulfilling the targets and requirements stipulated in the 2019 Access Rules. The NDA review highlighted that most programmes with ISL were broadcast at times when people can be expected to be asleep, an approach amounting to unequal treatment, which is not used for other demographics or other types of access programming such as subtitling.

The NDA review noted that the guidance and direction of Coimisiún na Meán (formerly the Broadcasting Authority of Ireland or ‘BAI’ at the time the review of the 2017 Act was undertaken) as the regulator in relation to broadcasters’ approach to Section 8 principles, regarding the timing of ISL broadcasting, was an important factor. While broadcasters are responsible under Section 8 for their decisions to provide programmes with ISL mainly during sleeping hours, the NDA noted that this approach was facilitated by the 2019 Access Rules.

While the 2019 Access Rules measure targets for subtitling and audio description based on an 18-hour day from 7am to 1am (which means programming in the early hours of the morning does not count towards targets), ISL targets are measured based on a 24-hour day. The NDA noted that this raised key questions about the meaningfulness of Section 8, particularly adherence to the principle of equality, when the Access Rules themselves do not require broadcasters to treat ISL users with equality. The NDA also stated that the assessment of ISL targets based on a 24-hour day raised questions about the adequacy of the Access Rules in having sufficient regard to Section 43(2)(d)(ii) of the Broadcasting Act, which requires the Rules to ‘have regard to’ the provision of sign language materials ‘at popular viewing times as well as at other times.’

In addition to the NDA’s review of the Irish Sign Language Act 2017, the Statutory Review similarly identified the fact that ISL programmes are generally carried during the night as a key issue for ISL users. The NDA therefore welcomes the proposed change to the assessment of ISL targets based on an 18-hour day, from 7am to 1am. This measure would also implement a key recommendation of the NDA review of the ISL Act 2017.[[6]](#footnote-6)

## Question 8: Do you have any further comments on the proposed changes to the Irish Sign Language (ISL) Rules section of the Access Rules?

The NDA review of the ISL Act 2017 found that broadcasted programmes with ISL are often repeated programmes rather than non-repeated (‘new’) content. The Statutory Review indicated that the issue of repeat programming would be considered as part of the revision of the 2019 Access Rules. However, the NDA notes that this matter is not dealt with in the Draft Access Rules.

The NDA cautions against broadcasters repeating programmes in seeking to meet the increased ISL targets and advises that the Draft Access Rules be amended to require balance in the ratio of repeated and non-repeated content and to provide a diversity of content equivalent to that provided to other viewers.

The NDA’s review of the ISL Act 2017 highlighted concerns raised by members of the public that there was occasionally a poor quality of ISL used in programmes with ISL, as well as concerns regarding the presentation of ISL interpreters on screen, for example cutting interpreters out of the camera shot. The NDA advises that an increase in ISL targets must also be accompanied by improved quality of ISL provision.

## Question 9: What are your views on the proposed targets for Audio Description (AD) for the 2025 to 2027 period?

The NDA notes that access users participating in the Statutory Review were of the opinion that the level of Audio Description (AD) provision is low. The same review also concluded that the targets for AD remain modest and there continues to be scope to increase these levels.

The proposed AD targets for the 2025–2027 period broadly represent incremental progress in line with the NDA’s advice that accessibility requirements should be met through a progressive and continuous process. However, we note that the 2023/2024 AD target for Virgin Media 1 is 5%, while the 2025 target is 4%. This target does not align with the requirement to progressively improve services.

## Question 10: Do you have any comments on the proposed changes to the Audio Description (AD) Rules section of the Access Rules?

The NDA notes that the language on AD targets for home-produced programming (Section 7.4) remains unchanged, with the Commission to agree with each broadcaster the proportion of the total increase in AD provision on an annual basis which will relate to home-produced programming. The Statutory Review highlighted calls to prioritise the provision of additional AD for home-produced programming. The NDA advises that this should be a key consideration for the Commission when engaging with broadcasters on AD targets for home-produced programming.

## Question 11: Do you have any view on the proposed deletions to Section 9 to 13 of the 2019 Access Rules?

### Complying with the Rules

The NDA notes the proposed deletion of Section 9 of the 2019 Access Rules, on the basis that it ‘is outdated due to updates in legislation’. While the NDA agrees that legislative updates require some amendments to this section, we consider that there is merit in retaining information as to how the Commission intends to evaluate, measure and report performance against the Rules, and how it plans to enforce compliance (either here or in Section 1.4 of the Draft Access Rules).

The Online Safety and Media Regulation Act 2022 introduces a significantly more robust compliance and enforcement framework, including sanctions for contraventions of the Draft Access Rules. However, Section 1.4 of the Draft Access Rules only makes a cursory mention of compliance and enforcement as follows: ‘Non-compliance with the Rules may result in a contravention of the Act and enforcement under Part 8B of the Act.’ By contrast, Section 9 of the 2019 Access Rules outlines the activities the former BAI can undertake in enforcing compliance and evaluating and measuring performance against the Rules.

In addition, the NDA recommends that the Draft Access Rules reference the Commission’s statutory obligations to:

* include within its annual report a report to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media on progress made towards increasing the accessibility of audiovisual media services to people with disabilities, and in particular, on progress made to achieve the intended outcomes relating to such accessibility set out in any media service rules.
* prepare a report for the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media on the operation of the media service rules every 3 years.

### Support for the Implementation of the Rules

The NDA disagrees with the proposed deletion of section 10 of the 2019 Access Rules titled “Support for the Implementation of the Rules”. The 2019 Access Rules indicate that support measures may include capacity building activities and measures related to the promotion and awareness of the Rules and their importance and value to audiences. The Commission’s rationale for proposing deletion of this section is that ‘it is more appropriate to determine how the implementation of the Rules should be supported via consultation with Disabled Persons Representative Organisations, broadcasters and its User Consultative Panels via ongoing discussion and engagement rather than codify it in the Rules as is the case with the 2019 Access Rules.’

The NDA advises that support measures are an important facilitator to effective implementation of the Draft Access Rules and this deletion would have the net effect of removing all references to support for implementation of the Rules. The NDA considers the wording in the 2019 Access Rules to be flexible and would favour retention of this section in amended form. In particular, the NDA advises that this section could be reworded to recognise the Commission’s commitment to supporting the implementation of the Access Rules on an ongoing basis, and to engaging with Disabled Persons Representative Organisations, broadcasters, its User Consultative Panels and other relevant stakeholders on specific measures to support implementation of the Rules.

## Question 12: Do you have any comments on the proposed changes to the “Access Principles and Influencing Factors” section of the Access Rules?

The NDA has no difficulty with the proposed changes in this section. However, we note that under the Access Principle ‘Incremental progression’, there is acknowledgment ‘that there are a number of issues other than funding which need to be addressed in order to increase access provision.’ The NDA advises that these issues be explicitly mentioned. For example, the Statutory Review recognised that there were barriers faced to ISL provision, including the shortage of ISL interpreters, capacity issues, and the lack of technology to allow for closed ISL.

## Question 13: Do you have any comments on the proposed changes to the “Standards Applying to Subtitling, Irish Sign Language & Audio Description” section of the Access Rules?

The NDA notes that there is no proposal to update provisions in the Irish Sign Language Standards relating to monitoring. The section states as follows: ‘Broadcasters should monitor the effectiveness of the service through contact with deaf people and their representatives.’

The NDA’s review of the ISL Act 2017 highlighted concerns raised by members of the public that there was occasionally a poor quality of ISL used in programmes with ISL, as well as concerns regarding the presentation of ISL interpreters on screen. The NDA’s discussions with the former BAI confirmed also that quality of ISL interpretation is not actively monitored due to lack of ISL skills in existing staff.

As outlined in the NDA review of the 2017 Act, monitoring of the quality of ISL interpretation for broadcast content is essential to ensure language preservation, and should be conducted independently by ISL-accredited individuals on the same basis as other quality checks by the Commission (formerly BAI). The NDA notes and welcomes that the former BAI voiced its support for the recommendation that future monitoring of ISL should be undertaken by a qualified ISL speaker or interpreter in the Statutory Review, while also recognising that ‘this is an operational matter that the BAI can implement itself’. The NDA therefore advises that the ISL Standards be amended to make provision for same.

# Conclusion

The NDA welcomes Coimisiún na Meán’s review of the 2019 Access Rules, which is timely given recent changes in the legislative and regulatory landscape relevant to broadcasting. We would be happy to engage with the Commission on any of the points raised in this submission and note that a review of the ISL Act is likely in 2025 which will have relevance to these Rules.

1. Access users refers to people who are D/deaf, hard of hearing, vision impaired, or hard of hearing and vision impaired who may require a sign language service, subtitling, or audio description to access and enjoy TV programmes. [↑](#footnote-ref-1)
2. “Access services” means subtitling, captioning, Irish Sign Language and audio description as defined within the Draft Code and Rules. [↑](#footnote-ref-2)
3. The NDA’s 2024 annual conference, taking place on 24 October 2024, will consider Article 30 of the Convention. We are liaising with colleagues within the Commission regarding participation at the event to ensure a focus on accessible television and broadcasting services. [↑](#footnote-ref-3)
4. Ireland has failed to meet the deadline of 19 September 2020 for transposition of the Audiovisual Media Services Directive. While commencement of the Online Safety and Media Regulation Act 2022 in March 2023 marked partial transposition of the Audiovisual Media Services Directive, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media has noted that full transposition will only be achieved once Coimisiún na Meán adopts relevant online safety and media services codes (including the revised Access Rules for Television Broadcasting Services). The right of persons with disabilities to participate and be integrated in the social and cultural life of the EU is linked to the provision of accessible audio-visual media services. The NDA therefore underscores the importance of full, effective and timely transposition of the Audiovisual Media Services Directive. [↑](#footnote-ref-4)
5. National Disability Authority (2022) **NDA Advice Paper on Disability Language and Terminology**, available at the following link: [NDA Advice Paper on Disability Language and Terminology - National Disability Authority](https://nda.ie/publications/nda-advice-paper-on-disability-language-and-terminology) [↑](#footnote-ref-5)
6. The next report on the operation of the Irish Sign Language Act 2017 is due in 2025. [↑](#footnote-ref-6)