



Notice of proposed change to
L-DTPS licence obligations of
ESTV Limited (the local TV
licensee for London)

Publication date: 25 July 2014

Responses close: 10am on 26 August 2014

About this document

This document seeks views on potential changes to the local obligations for the local TV licence for London.

The requested changes from ESTV Limited (ESTV) – the provider of the local TV service London Live – would include reductions to the hours of local content and changes to the types of programming provided.

This statutory Notice, given under section 19(3C) of the Broadcasting Act 1996, asks for representations from interested parties on whether Ofcom should allow changes to ESTV's Programming Commitments. These are the local content obligations set out in the broadcasting licence.

After considering all representations received, Ofcom will take a decision about whether or not to allow these changes. We ask interested parties to respond to the Notice by 10:00am on Tuesday 26 August.

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Section 1

Notice of proposed change to L-DTPS licence obligations

- 1.1 This document is a Notice under section 19(3C) of the Broadcasting Act 1996 as amended by the Local Television Programme Services Order 2012 (“the 1996 Act”).
- 1.2 In accordance with section 19(3C) of the 1996 Act, this Notice specifies changes that have been proposed by ESTV Limited (“ESTV”), the local digital television programme service licensee for London, to the Programming Commitments set out in its L-DTPS licence (“the Licence”) for its local television service London Live (“the Licensed Service”).
- 1.3 This Notice asks for representations from all interested parties on the changes proposed by ESTV. Representations should be made via email to local.tv@ofcom.org.uk and must be received by 10am on Tuesday 26 August 2014.

Introduction

- 1.4 The statutory framework for licensing local television is set out in the Broadcasting Act 1996 as amended by the Local Television Programme Services Order 2012 (“the 1996 Act”). The statutory provisions relevant to this Notice are included in Annex 2.
- 1.5 Pursuant to section 19(3A)(c) Condition 5(1) of the 1996 Act the Licence¹ requires ESTV to maintain the character of the Licensed Service for the duration of the Licence in accordance with the Programming Commitments set out in the annex to the Licence.
- 1.6 The Programming Commitments are the local content obligations which ESTV has committed to deliver in the provision of the Licensed Service. These formed the basis of Ofcom’s decision on 29 January 2013 to award the Licence to ESTV².
- 1.7 Under the statutory framework if Ofcom considers that changes to the Programming Commitments would result in a departure from the character of the Licensed Service, before it can decide whether to consent to those changes, Ofcom must publish a Notice specifying the proposed changes and giving anyone likely to be affected by the proposed departure the opportunity to make representations about that proposal. The period for making representations must end no later than 28 days after publication of the Notice.
- 1.8 Having considered the effect of the changes ESTV has proposed, Ofcom has decided that the changes would result in a departure from the character of the service. This is on the basis that Ofcom considers the changes proposed by ESTV are significant changes to its Programming Commitments and would include reducing the number of hours of local content, both first run and repeats, in order to allow different types of programming in the broadcast schedule to be substituted for the hours of local content its Programming Commitments are reduced by.

¹ http://licensing.ofcom.org.uk/binaries/tv/local-tv/london/London_local_TV_licence.pdf

² <http://licensing.ofcom.org.uk/binaries/tv/local-tv/applicants/London.pdf>

- 1.9 Accordingly, Ofcom is now seeking representations by 10am on Tuesday 26 August 2014 on the proposals set out in Section 2 of this Notice, particularly in relation to the statutory grounds set out in the following paragraph.
- 1.10 Under section 19(3B) of the 1996 Act, Ofcom may consent to a departure from the character of the service, if it is satisfied:
 - 1.10.1 that the departure would not substantially alter the character of the service,
 - 1.10.2 that the departure would not unacceptably reduce the number and range of the programmes about the area or locality for which the service is licensed,
 - 1.10.3 that the departure would not unacceptably reduce the number of programmes made in the area or locality for which the service is licensed, and
 - 1.10.4 that the service would continue to meet the needs of the area or locality for which the service is licensed.
- 1.11 Following the end of the period given in this Notice for making representations, Ofcom will consider ESTV's request taking account of all representations received and decide whether to consent to ESTV's proposed changes in accordance with the above grounds.

Section 2

Changes proposed by ESTV Limited

2.1 The Programming Commitments currently in the ESTV licence are as follows:

Programming Commitments for London Live			
Programming output	The service will: <ul style="list-style-type: none"> • be an interactive news and entertainment service created in, for and by those who live and work in the Licensed Area; • include rolling news, what's on, business, sport, travel and weather programming available on linear and non-linear platforms and will break into the DTT schedule as necessary; • include current affairs investigations, campaigns and debates will enable local people to influence the agenda through interactive functionality and live contributions; • be a launchpad for local people from every local community with a showcase for videos by aspiring London bands, comedians, filmmakers and other entertainers and community groups; • include live and pre-recorded content about London's events through partnerships with London's cultural organisations; • include archived factual, entertainment and lifestyle programming from London's past; • include hyper-local programming delivered through 33 digital platforms in the Boroughs and City of the Licensed Area, edited by the service's team; and • include a considerable amount of content made in and focused on the Licensed Area, with a small number of programmes selected from elsewhere to add context to exhibitions, events or community celebrations. 		
Hours of local programming per day/week	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	8 hours per day	9 hours per day	10 hours per day
Repeats:	10 hours per day	9 hours per day	8 hours per day
Hours of local programming per day/week in peak-time (18.00-22.30)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	3 hours per day	3.5 hours per day	3.5 hours per day
Repeats:	1.5 hours per day	1 hour per day	1 hour per day
Hours and scheduling of local news and current affairs programming	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
	Mon-Sun:	Mon-Sun:	Mon-Sun:

First run:	4.5 hours rolling news per day across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.	4.5 hours rolling news per day across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.	4.5 hours rolling news across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.
	Mon-Sun: Current affairs x 30 minutes.	Mon-Sun: Current affairs x 30 minutes.	Mon-Sun: Current affairs x 30 minutes.
Repeats:			

2.2 The changes proposed are as follows.

2.2.1 Two edits to the programming output (description of the service):

- i) inserting 'Will endeavour to' at the beginning of the first bullet; and
- ii) 'Where available will' at the beginning of the seventh.

2.2.2 Removing all commitments to repeated programming:

- i) In the hours of local programming per day;
- ii) In the hours of local programming per day in peak-time; and
- iii) In the hours and scheduling of local news and current affairs.

2.2.3 Adjusting the hours of local programming:

- i) In the hours of local programming per day, changing from 9 to 8 hours in year two, and from 10 to 8 hours in year three and onwards;
- ii) In the hours of local programming per day in peak-time, changing from 3 hours to 1 hour in year one, from 3.5 hours to 1 hour in year two, and from 3.5 hours to 1 hour in year three and onwards.

2.3 The proposed Programming Commitments, showing all these proposed changes in highlight, are as follows:

Programming Commitments for London Live	
Programming output	<p>The service will:</p> <ul style="list-style-type: none"> • <u>Will endeavour to</u> be an interactive news and entertainment service created in, for and by those who live and work in the Licensed Area; • include rolling news, what's on, business, sport, travel and

	<p>weather programming available on linear and non-linear platforms and will break into the DTT schedule as necessary;</p> <ul style="list-style-type: none"> include current affairs investigations, campaigns and debates will enable local people to influence the agenda through interactive functionality and live contributions; be a launchpad for local people from every local community with a showcase for videos by aspiring London bands, comedians, filmmakers and other entertainers and community groups; include live and pre-recorded content about London's events through partnerships with London's cultural organisations; include archived factual, entertainment and lifestyle programming from London's past; Where available will include hyper-local programming delivered through 33 digital platforms in the Boroughs and City of the Licensed Area, edited by the service's team; and include a considerable amount of content made in and focused on the Licensed Area, with a small number of programmes selected from elsewhere to add context to exhibitions, events or community celebrations. 		
Hours of local programming per day/week	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	8 hours per day	9 8 hours per day	10 8 hours per day
Repeats:	10 hours per day	9 hours per day	8 hours per day
Hours of local programming per day/week in peak-time (18.00-22.30)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	3 1 hours per day	3 51 hours per day	3 51 hours per day
Repeats:	1.5 hours per day	1 hour per day	1 hour per day
Hours and scheduling of local news and current affairs programming	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	<p>Mon-Sun: 4.5 hours rolling news per day across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.</p>	<p>Mon-Sun: 4.5 hours rolling news per day across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.</p>	<p>Mon-Sun: 4.5 hours rolling news across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.</p>
Repeats:	<p>Mon-Sun: Current affairs x 30 minutes.</p>	<p>Mon-Sun: Current affairs x 30 minutes.</p>	<p>Mon-Sun: Current affairs x 30 minutes.</p>

Annex 1

Notes

- A1.1 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.2 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.3 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Annex 2

Relevant statutory provisions

A2.1 The relevant excerpt from section 19 of the Broadcasting Act 1996, which includes the statutory provisions referred to in this Notice³ is:

“(3A) A local digital television programme service licence must also include such conditions as appear to OFCOM to be appropriate for securing that—

(a) the service is provided in the location specified by OFCOM,

(b) charges on persons in respect of reception of the service in the United Kingdom are prohibited,

(c) the character of the licensed service, as proposed by the licence holder when making the application, is maintained for the duration of the licence,

(d) the service is at all times offered as available (subject to the need to agree terms) to be broadcast –

(i) by means of the multiplex licensed for the carriage of a local digital television programme service in the location specified by OFCOM pursuant to section 12(1)(i), and

(ii) in such technical format or in accordance with such technical instructions as OFCOM may specify,

(e) the service does not contain any pornographic material (within the meaning of section 19A),

(f) the service does not contain any advertising falling within section 19B,

(g) the licence holder co-operates with holders of local digital television programme service licences and holders of local multiplex licences to facilitate the provision of local digital television programme services in the United Kingdom,

(h) the licence holder, if notified to do so by OFCOM, participates in the formation of a legal entity which is intended to facilitate the provision of local digital television programme services,

(i) the licence holder seeks (in co-operation with the legal entity mentioned in paragraph (h)) to measure the number of viewers of the service, and

(j) the licence holder encourages the legal entity mentioned in paragraph (h) to apply for a local multiplex licence which OFCOM propose to grant under section 7(1) or to negotiate for a local multiplex licence which otherwise becomes available.

³ <http://www.legislation.gov.uk/ukxi/2012/292/contents/made>

(3B) Conditions included in a licence under subsection (3A)(c) may authorise OFCOM to consent to a departure from the character of the licensed service if they are satisfied—

(a) that the departure would not substantially alter the character of the service,

(b) that the departure would not unacceptably reduce, the number and range of the programmes about the area or locality for which the service is licensed,

(c) that the departure would not unacceptably reduce, the number of programmes made in the area or locality for which the service is licensed, and

(d) that the service would continue to meet the needs of the area or locality for which the service is licensed.

(3C) Before deciding whether to consent to a departure from the character of a licensed service on any of the grounds specified in subsection (3B)(b) to (d) , OFCOM must publish a notice specifying —

(a) the proposed departure, and

(b) the period in which representations may be made to OFCOM about the proposal.

(3D) That period must end later than 28 days after the publication of the notice.

(3E) The notice must be published in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the departure.

(3F) OFCOM—

(a) are not required to publish a notice under this section, or

(b) may specify in such a notice a period shorter than that required by subsection (3D),

if they consider that the publication of the notice, or allowing a longer period for representations, would result in a delay that would be likely prejudicially to affect the interests of the licence holder.

(3G) OFCOM are not required under this section—

(a) to publish any matter that is confidential in accordance with subsections (3H) or (3I), or

(b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.

(3H) A matter is confidential under this subsection if—

(a) it relates specifically to the affairs of a particular body, and

(b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.

(3I) A matter is confidential under this subsection if —

(a) it relates specifically to the private affairs of an individual, and

(b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.”