

Local TV decision: ESTV change request

ESTV Limited (“ESTV”) is the holder of the local digital television programme service licence (“the Licence”) for London. The service provided by ESTV, London Live, must meet specific content obligations set out in the Licence known as programming commitments.

On 17 September 2014 ESTV made a request to Ofcom for variations to the programming commitments in the Licence. The variations relate to the requirements to show a specified number of hours of repeats of local programming per day, including during peaktime hours. The details are set out here (changes in **bold**):

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	Year 1	Year 2	Year 3 onwards
First run:	8 hours per day	9 hours per day	10 hours per day
Repeats:	10 hours per day / 6 hours	9 hours per day / 5 hours	8 hours per day / 4 hours
Hours of local programming per day in peak-time (18.00-22.30)	Year 1	Year 2	Year 3 onwards
First run:	3 hours per day	3.5 hours per day	3.5 hours per day
Repeats:	1.5 hours per day / Nil	1 hour per day / Nil	1 hour per day / Nil
Hours and scheduling of local news and current	Year 1	Year 2	Year 3 onwards

affairs programming	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.
	Mon-Sun:	Mon-Sun:	Mon-Sun:
Repeats:	Current affairs x 30 minutes.	Current affairs x 30 minutes.	Current affairs x 30 minutes.

Statutory framework

Under the Broadcasting Act 1996 (“1996 Act”) licences for local digital television programme services (“L-DTPS”) must include such conditions as appear to Ofcom to be appropriate for securing, amongst other things, that the character of the licensed service, as proposed by the licence holder when making the application, is maintained for the duration of the licence.¹ This requirement is reflected in Condition 5(1) of the Licence and the programming commitments set out in the Licence. Ofcom has power to vary the conditions of a licence by notice².

The statutory framework provides that conditions included in an L-DTPS licence may authorise Ofcom to consent to a departure from the character of the service if four statutory grounds are met, and sets out a procedural requirement for a public consultation before Ofcom can decide to consent to a departure from the character of the service³. These requirements only apply where the change requested is a departure from the character of the service.

Ofcom decision

The Ofcom Board has delegated the discharge of certain of its functions in relation to television and radio broadcast licensing to a committee known as the Broadcast Licensing Committee (“BLC”), chaired by a member of the Ofcom Board. The BLC has responsibility for deciding on the award of, and proposals for significant variations to, L-DTPS licences.

The BLC met on 30 September 2014 to consider the variation request. It noted that the requested changes would not affect the description of the programming output set out in the programming commitments, and that the requirements relating to first-run local programming and news and current affairs programming would be unchanged. It also noted that in its request ESTV had committed not to use for teleshopping or gambling the peak-time hours which would be freed-up by removing the peak-time requirement to provide repeats of local programming.

After careful deliberation, the BLC considered that the character of the service overall would still be maintained following the requested variations, and in particular that the amount of

¹ Section 19(3A)(c) of the 1996 Act as modified by the Local Television Programme Services Order 2012

² Section 4(4) of the 1996 Act.

³ Section 19 of the 1996 Act as modified by the Local Television Programme Services Order 2012.

local programming hours required under the licence would still be sufficiently high to be consistent with delivery of the programming output. Accordingly, after clarifying with ESTV that a prohibition on teleshopping and gambling in peak-time hours would (if the request were approved) be included in ESTV's licence, on 6 October the BLC decided that the requested variations would not constitute a departure from the character of the service, and that they should be allowed.

The amended programming commitments are available here:

<http://licensing.ofcom.org.uk/tv-broadcast-licences/current-licensees/local-tv/london/>

Background note

ESTV had previously submitted a request for a significantly broader set of variations to its programming commitments. Ofcom decided that these variations would be a departure from the character of the service. Accordingly, Ofcom consulted on the proposal. On 9 September 2014, following the consultation, Ofcom's BLC decided not to consent to these changes. Details of these variations and the BLC's decision are set out here:

http://stakeholders.ofcom.org.uk/binaries/consultations/estv/statement/ESTV_statement.pdf