



London Live: change to licence obligations

Statement

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About this document

This document sets out Ofcom's decision on ESTV Limited's request for changes to the programming commitments set out in its local TV licence for the London area. This service is known as London Live, and the changes requested concern the commitments to provide local programming (particularly first-run local news and current affairs programming) set out in ESTV's licence.

After having consulted on this request, and carefully considered all of the representations made by respondents to that consultation, Ofcom has decided to consent to ESTV Limited's request.

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Summary

- 1.2 ESTV Limited (“ESTV”) currently holds a local digital television programme service (“L-DTPS”) licence for the London area. This licence was granted to ESTV on 23 January 2014 (the “Licence”).¹
- 1.3 With this licence, ESTV operates a local television service known as ‘London Live’. This service was launched on 31 March 2014.
- 1.4 On 2 September 2016, ESTV submitted a licence variation request to Ofcom (the “Variation Request”). The Variation Request concerns the programming commitments (as set out in the annex to the Licence) which reflect the character of the licensed service, particularly those relating to first-run local programming (including first-run local news and current affairs programming).
- 1.5 The changes requested by ESTV in the Variation Request are as follows:
 - adjusting the hours of first-run local programming (which is local news and current affairs programming) from 5.5 hours per day to 3.5 hours per weekday and 1 hour per day on weekends;
 - adjusting the hours of local programming that is broadcast for the first time on the licensed service but has been broadcast on other services in the UK before from 2.5 hours per day (of which 1.5 hours is in peak-time) to 2 hours per day (of which 1 hour is in peak-time); and
 - adjusting the hours of repeated local programming in peak-time from 1.5 hours to zero.
- 1.6 On 7 September 2016, Ofcom decided that the changes requested in the Variation Request would amount to a departure from the character of the licensed service as proposed by ESTV when applying for an L-DTPS licence. Pursuant to section 19(3C) of the Broadcasting Act 1996 (the “1996 Act”), Ofcom therefore issued a public consultation seeking views on the Variation Request. A total of 16 responses were submitted to this consultation.
- 1.7 After careful consideration of the request against the statutory grounds and taking account of all the representations made by interested parties in response to its consultation, Ofcom has decided to consent to the Variation Request.

¹ For a copy of ESTV’s licence, see https://www.ofcom.org.uk/_data/assets/pdf_file/0017/33704/london_local_tv_licence.pdf,

Background

Statutory framework

- 1.8 In 2012, Parliament gave Ofcom the powers and duties to license a new generation of local television services. These have been implemented through modifications to the 1996 Act.
- 1.9 Ofcom is required by the 1996 Act to undertake a competitive award process in order to award a local TV licence.² The 1996 Act requires that, as part of that process, applications for a L-DTPS licence must include a detailed explanation of how the character of the service, as proposed in the application, is to be maintained for the period for which the licence would be in force.
- 1.10 The 1996 Act also provides that the licence awarded 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.³
- 1.11 The 1996 Act also provides that Ofcom may consent to a departure from the character of a licensed service if it is satisfied that:
- a) the departure would not substantially alter the character of the service;
 - b) 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) the departure would not unacceptably reduce the number of programmes made in the area or locality for which the service is licensed; and
 - d) the service would continue to meet the needs of the area or locality for which the service is licensed.⁴
- 1.12 Before deciding whether to consent to a departure from the character of the licensed service, Ofcom is also required to publish a consultation on the proposed departure.
- 1.13 Where a variation to a licence does not amount to a departure from the character of the service, Ofcom is entitled to consent without considering the four statutory criteria referred to above (and without public consultation).

Award of the Licence

- 1.14 Ofcom issued an invitation to apply for a L-DTPS licence for the London area on 10 May 2012⁵ and received five applications in response. Ofcom awarded the licence to ESTV for the London Live service.⁶

² Section 18 of the 1996 Act as modified by the Local Television Programme Services Order 2012.

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

⁴ Section 19(3B) of the 1996 Act as modified by the Local Television Programme Services Order 2012.

⁵ For a copy of Ofcom's Invitation to Apply for a licence for the London area, see <http://licensing.acmpub.intra.ofcom.local/tv-broadcast-licences/local/award-decisions/>

⁶ For a copy of Ofcom's award decision, see <http://licensing.acmpub.intra.ofcom.local/binaries/tv/local-tv/applicants/London.pdf>.

- 1.15 On 23 January 2014, Ofcom granted the Licence to ESTV and included, within condition 5(1), a requirement that ESTV provide the service in accordance with the programming commitments set out in the annex to the Licence. Those programming commitments give effect to the character of the licensed service. The programming commitments included in the annex at grant reflected the programming commitments (both quantitative and qualitative) made by ESTV in its licence application.
- 1.16 Ofcom also included within the Licence a condition allowing Ofcom to consent to a departure from the character of the licensed service provided that it is satisfied that the proposed departure would meet the four statutory conditions set out in section 19(3B)(a) to (d) of the Act (discussed at paragraph 1.11 above).

Subsequent variation requests

- 1.17 Over the last three years, ESTV has submitted five requests to Ofcom in which it has sought Ofcom's consent to a variation of the programming commitments set out in the annex to the Licence.
- 1.18 In relation to four of these, Ofcom reached the view that the changes requested would not amount to a departure from the character of the licensed service, as given effect to by the programming commitments in the annex to the Licence, and that the character of the licensed service would therefore be maintained following the changes.
- *The First Variation Request:* On 20 March 2014, ESTV asked Ofcom to remove the programming commitment requiring it to provide bulletins of at least 1 minute in duration hourly and half hourly (on weekdays) and hourly (at the weekend). Having considered the request, Ofcom decided that the character of the licensed service would be maintained following this variation, and that the variation would not constitute a material change to the Licence. The programming commitments set out in the annex to the Licence were amended accordingly.⁷
 - *The Third Variation Request:* On 17 September 2014, ESTV asked Ofcom to agree to a reduction in the amount of repeated local programming that it was required to provide (including to reduce to zero the amount of repeated local programming that it was required to provide in peak-time). Ofcom decided that the character of the service would be maintained following the requested variation. In this regard, Ofcom considered that the amount of local programming hours required under the Licence would still be sufficiently high to be consistent with delivery of the programming output. The programming commitments set out in the annex to the Licence were amended accordingly.⁸
 - *The Fourth Variation Request:* On 1 April 2015, ESTV asked Ofcom to amend its local programming commitments to (i) reduce the amount of first-run local programming that it is required to provide, whilst increasing correspondingly the amount of repeated local programming that it is required to provide, and (ii) provide ESTV with greater flexibility as to when local news and current affairs

⁷ Ofcom's decision on the First Variation Request is available at https://www.ofcom.org.uk/_data/assets/pdf_file/0032/88349/25-March-2014-Local-TV-decision-ESTV-change-request.pdf

⁸ Ofcom's decision on the Third Variation Request is available at https://www.ofcom.org.uk/_data/assets/pdf_file/0020/29333/final_decision_estv.pdf.

programming is shown and how the overall provision is split between news and current affairs.

On 6 May 2015, Ofcom decided that the character of the licensed service would be maintained following the requested variation. Ofcom considered that the amount of local programming hours required under the Licence would still be sufficiently high to be consistent with delivery of the programming output. The programming commitments set out in the annex to the Licence were amended accordingly.⁹

- *The Fifth Variation Request:* On 14 December 2015, ESTV asked Ofcom to amend its commitments to first-run local programming by reducing the amount of first-run local programming that it is required to provide (from 8 to 5.5 hours per day) whilst including a new commitment that ESTV will provide 2.5 hours per day of local programming that is broadcast for the first time on the licensed service but has been broadcast on other services in the UK before.¹⁰ Ofcom decided on 4 April 2016 that the character of the service would be maintained following the requested variation and, in reaching this view, noted that London Live would continue to provide a high volume of locally-relevant content on a daily basis. The programming commitments set out in the annex to the Licence were amended accordingly.¹¹

1.19 In respect of one of the previous variation requests, Ofcom reached the view that the changes requested would amount to a departure from the character of the licensed service, as described in the annex to the Licence, and decided to not consent to those changes.

- *The Second Variation Request:* On 11 July 2014, ESTV asked Ofcom to make a number of changes to its programming commitments. These included edits to the programming output (description of the service) such that the obligation on ESTV to provide an interactive news and entertainment service created in, for and by those who live and work in London would become an obligation on ESTV to “endeavour” to provide such a service. Similarly, ESTV requested that its obligation to include hyper-local programming should be an obligation to provide this “where available”. ESTV also requested the removal of all commitments to repeated programming in the Licence as well as reductions in the hours of first-run local programming that it is required to provide.

Ofcom decided that the changes requested in this Second Variation Request would amount to a departure from the character of the licensed service and Ofcom published a consultation on this proposed departure on 25 July 2014. Having considered the request and all of the responses to the consultation, Ofcom decided that it would not meet the statutory grounds set out in section 19(3B) of the 1996 Act and therefore refused consent to this variation request.¹²

⁹ Ofcom’s decision on the Fourth Variation Request is available at https://www.ofcom.org.uk/_data/assets/pdf_file/0019/33724/blc_london_pc_statement.pdf.

¹⁰ Broadly speaking, this means programming which is about the London area but which has been purchased by London Live and previously broadcast on one or more other channels in the UK.

¹¹ Ofcom’s decision on the Fifth Variation Request is available at https://www.ofcom.org.uk/_data/assets/pdf_file/0030/63957/local_tv_decision_-_april_2016_-_london_live.pdf.

¹² Ofcom’s decision on the Second Variation Request is available at <https://www.ofcom.org.uk/consultations-and-statements/category-3/estv>.

1.20 ESTV’s current programming commitments (as amended to reflect the First, Third, Fourth and Fifth Variation Requests), which are annexed to the Licence, are set out in **Annex 1**.

The current Variation Request

1.21 The changes requested by ESTV in the Variation Request are as follows:

- adjusting the hours of first-run local programming (which is local news and current affairs programming) from 5.5 hours per day to 3.5 hours per weekday and 1 hour per day on weekends;
- adjusting the hours of local programming that is broadcast for the first time on the licensed service but has been broadcast on other services in the UK before from 2.5 hours per day (of which 1.5 hours is in peak-time) to 2 hours per day (of which 1 hour is in peak-time); and
- adjusting the hours of repeated local programming in peak-time from 1.5 hours to zero.

1.22 The changes requested by ESTV are shown as tracked changes against its current programming commitments, in Table 1 below.

Table 1: Requested programming commitments

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. • in addition to the programming commitments set out below, provide, from Year 3 onwards, 2.5 2 hours per day of local programming that is broadcast for the first time on the licensed service but has been broadcast on other services in the UK before, of which 1.5 1 hours per day shall be delivered in peak-time (18.00-22.30). 		
	Year 1	Year 2	Year 3 onwards

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Hours of local programming per day	8 hours per day	8 hours per day	First run: 5-5 3.5 hours per day weekday & 1 hour per day weekends
	First run:	6 hours	6 hours
Repeats:			
Hours of local programming per day in peak-time (18.00-22.30)	Year 1	Year 2	Year 3 onwards
	3 hours per day See addendum in Annex	2.5 hours per day See addendum in Annex	First run: 1 hour per day See addendum in Annex
Repeats:	Nil See addendum in Annex	1.5 hours See addendum in Annex	1.5 hours See addendum in Annex Nil
Hours and scheduling of local news and current affairs programming	Year 1	Year 2	Year 3 onwards
	Mon-Sun: 4.5 hours rolling news per day across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.	Mon-Sun: 5.5 hours rolling news & current affairs per day with 1 hour in peak per day	Mon-Fri Sun : 5-5 3.5 hours rolling news & current affairs per weekday with 1 hour in peak per day. Sat-Sun 1 hour per day on Saturday and Sunday .
Repeats:	Mon-Sun: Current affairs x 30 minutes.	Mon-Sun: Current affairs x 30 minutes.	Mon-Sun: Current affairs x 30 minutes.
This addendum forms part of the Annex to the Licence			
The licensee is not permitted in peak-time to schedule teleshopping (defined as television-broadcast direct offers for the supply of goods and services, including immovable property rights and obligations, in return for payment). For the avoidance of doubt, teleshopping also includes direct offers, in return for payment, for gaming and betting (as defined in the Gambling Act 2005) and spread betting.			

1.23 Ofcom considered that the changes requested in the Variation Request would amount to a departure from the character of the licensed service and therefore issued a consultation on these in accordance with section 19(3C) of the 1996 Act on 14 September 2016.¹³ We received 16 responses to that consultation and consider these, together with the submissions made by ESTV in the Variation Request, in reaching our decision.¹⁴

¹³ For a copy of Ofcom's consultation on the Variation Request, see https://www.ofcom.org.uk/data/assets/pdf_file/0028/90289/2016-09-final-consultation-London-Live-correction.pdf.

¹⁴ There were 3 confidential responses. The non-confidential responses can be found here <https://www.ofcom.org.uk/consultations-and-statements/category-3/london-live-programming-commitments>

1.24 In light of our view that the Variation Request would amount to a departure from the character of the service, we may only consent to it if we are satisfied that the proposed departure would meet each of the four statutory criteria set out in section 19(3B) of the 1996 Act, as replicated in condition 5(2) of the Licence. We therefore consider each of these in turn below and then decide whether to consent to the Variation Request.

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

1.25 ESTV has submitted that the changes requested would not substantially alter the character of the service. In particular, in the Variation Request, it has suggested that the service will be very much identifiable as London Live as presently on air and that, in particular, when most viewers are watching the service (early morning and in the evening) there will be little change. It has also emphasised that the changes requested do not affect or do not require a change in the description of the “programming output” as set out in the programming commitments annexed to the Licence. ESTV has also explained that, in its view, the character of a service should not be viewed in simple mathematical terms as it concerns the feel or identity of the channel and is therefore more intangible and subtle.

1.26 A number of respondents to our consultation did however object to the Variation Request on the basis that it would substantially alter the character of the licensed service. Many suggested, in particular, that the reduction in first-run local programming (from 5.5 hours per day to 3.5 hours per day on weekdays, and to 1 hour per day at the weekend) would substantially alter the character of the service and mean that London Live is no longer a London-centric channel. Others also emphasised that the changes requested would allow London Live to commence broadcasting more non-local content and that this would amount to a substantial alteration in the character of the service.

1.27 In considering the impact of the Variation Request on the character of the licensed service, we are mindful of the fact that all qualitative (i.e. non-hours-related) commitments would remain unchanged and the section of the programming commitments describing the “programming output” would not be altered. As a result, ESTV would still provide a wide variety of content about the London area, such as:

- current affairs investigations, campaigns and debates;
- showcases for videos by aspiring London bands, comedians, filmmakers and other entertainers and community groups;
- live and pre-recorded content about London’s events through partnerships with London’s culture organisations;
- archived factual, entertainment and lifestyle programming from London’s past; and
- hyper-local programming delivered through 33 digital platforms in the Boroughs and City.

1.28 We consider this to be important because, in our view, the character of the licensed service should be assessed in the round taking into account the entirety of the programming commitments put forward by ESTV when applying for the Licence. Whilst the quantity of local programming provided by ESTV was a factor in Ofcom’s

award decision, it was not the sole factor taken into account by Ofcom when deciding to award the Licence to ESTV.¹⁵

1.29 After careful consideration, we are also of the view that the quantity of local programming proposed by ESTV would still be sufficiently high to be consistent with delivery of the qualitative “programming output” requirements set out in the annex to the Licence.

1.30 We also consider that:

- even with the requested changes, there would still remain a strong commitment to delivering first-run local news and current affairs programming in the Licence. In particular, ESTV would still be required to provide a total of 19.5 hours¹⁶ of first-run local news and current affairs programming per week. There would also remain a strong commitment to local programming more generally, with 9.5 hours of local programming per weekday;
- most viewers (especially those who watch the breakfast and/or evening slots) would be unlikely to see any change in the service. In particular, there would be no change to the volume of first-run local news and current affairs programming in peak-time (1 hour per day) which ESTV has explained gains the highest audience of its news programmes;
- whilst the most significant reduction would be to the amount of first-run local news and current affairs programming on weekends, ESTV would remain committed to providing 1 hour of such content per day on weekends and would also continue to be required to provide 6 hours of repeat local programming (which may include repeat local news and current affairs programming) per day on weekdays; and
- looking at the service as a whole, including quantitative as well as qualitative aspects, the service will remain a London-centric service. In particular, almost half of all weekday output (11.5 hrs¹⁷) relevant to the London area and over a third of all weekend output would be locally-relevant.¹⁸

1.31 We note the concerns of some respondents to our consultation, who suggested that the variation would allow London Live to commence broadcasting more non-local content and that this would amount to a substantial alteration in the character of the service. However, for the reasons set out above, we are satisfied that the London Live service would continue to provide a significant amount of local programming made in or about the London area and that this would be sufficiently high to be consistent with the qualitative commitments set out in the Licence. It has also always been Ofcom’s policy that - outside the delivery of programming commitments set out in L-DTPS licences - local TV services should be allowed to broadcast other

¹⁵ See Ofcom’s decision to award the Licence to ESTV, at <http://licensing.acmpub.intra.ofcom.local/binaries/tv/local-tv/applicants/London.pdf>.

¹⁶ 3.5 hours per day on weekdays and 1 hour per day at the weekend.

¹⁷ On weekdays, this would comprise 3.5 hours first-run, 6 hours repeats and 2 hours per day of local programming broadcast for the first time on the licensed service but that has been broadcast on other services in the UK before.

¹⁸ On Saturdays and Sundays, this would comprise 1 hour of first-run, 6 hours repeats and 2 hours per day of local programming broadcast for the first time on the licensed service but that has been broadcast on other services in the UK before.

programming (including non-local programming) provided that this is done in keeping with any restrictions stipulated in their licence and the relevant codes.

- 1.32 Having considered ESTV's representations, and the representations of respondents to our consultation, on this criterion, and for the reasons set out above, we are satisfied that, if we were to consent to the departure from the character of the licensed service set out in the Variation Request, it would not substantially alter the character of that service.

Ground (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

- 1.33 In the Variation Request, ESTV explained that, in its view, the changes requested would not amount to an unacceptable reduction in the number or range of programmes made about the London area. It suggested that this is the case both in absolute quantitative terms but also in terms of the overall 'feel' or character of the service. It suggested, in particular, that most viewers watch London Live from 6pm onwards or in the morning and, as a result, the vast majority of its viewers would hardly recognise any difference to its output.
- 1.34 Many respondents to our consultation did, however, suggest that the Variation Request would unacceptably reduce the *number* of programmes about London. Many referred, in particular, to the fact that there would no longer be first-run local programming outside peak-time at weekends.
- 1.35 One respondent to our consultation also suggested that the Variation Request would do little to broaden the *range* of television programmes generally available. This was because, in the respondent's view, peak-time is likely to be the time when the channel has most viewers available and if this is the time when acquired rather than locally-produced or targeted programming will be broadcast, a significant number of viewers will have little or no local programming available to them during the time they are most likely to watch television.
- 1.36 In considering this statutory criterion, we firstly consider whether the changes requested would unacceptably reduce the *number of programmes* about the London area on the London Live service.
- 1.37 We recognise that the number of programmes about the London area could reduce as a result of the Variation Request, depending on what content ESTV decides to broadcast instead.
- 1.38 However, when considering the Variation Request, our view is that the reduction in this case would not unacceptably reduce the number of the programmes about the London area given that:
- London Live would still be required to provide 1 hour of local news and current affairs programming at peak-time on weekdays;

- on weekdays, London Live would also still be required to provide 11.5 hours of locally-relevant programming (which is only down by 18% as against its current licence commitment to provide 14 hours¹⁹ of such content); and
 - whilst the most significant reductions in programming about London would be on weekends (when the amount of local programming would reduce from 14 to 9²⁰ hours - a 36% reduction), ESTV would continue to be required to provide 1 hour of first-run local news and current affairs programming in peak-time at the weekend and to also provide 6 hours of repeat local programming per day. We also note ESTV's suggestion that most viewers watch London Live from 6pm onwards (i.e. peak-time) or in the morning and that the vast majority of its audience would therefore hardly recognise any difference to the London Live service.
- 1.39 We now consider whether the *range of programmes* about the London area would be unacceptably reduced as a result of the Variation Request. In reaching a view on this, we consider that we need to be satisfied that the departure from the character of the licensed service would not unacceptably reduce the range of programmes about London, rather than that it would broaden the range of television programmes about London available (as one respondent had suggested).
- 1.40 Our view is that the Variation Request would not unacceptably reduce the range of programmes about the London area. This is because:
- there would be no change to the descriptive section of the “programming output” requirements set out in the annex to the Licence. As a result, ESTV would still be required to provide a wide range of content about the London area such as current affairs, entertainment and lifestyle programming and hyper-local programming (see paragraph 1.27 above); and
 - ESTV would continue to be required to provide a stipulated amount of locally-relevant programming per day (11.5 hours on weekdays and 9 hours per day at the weekend).
- 1.41 We also note that, whilst Ofcom decided that this statutory criterion would not be met if it consented to the Second Variation Request, this was because we were concerned by ESTV's request to amend the qualitative commitments to include the wording “*Where available will*”. In particular, we were concerned that it could result in a very significant weakening of these elements of the programming commitments and would effectively remove the obligation to include hyper-local programming delivered through digital platforms in each of the London boroughs. As noted above, ESTV has not requested any amendments to the qualitative programming commitments in the current Variation Request.
- 1.42 Having considered ESTV's representations, and the representations of respondents to our consultation, on this criterion, and for the reasons set out above, we are satisfied that, if we were to consent to the departure from the character of the licensed service set out in the Variation Request, it would not unacceptably reduce

¹⁹ 5.5 hours first-run, 6 hours repeats and 2.5 hours per day of local programming broadcast for the first time on the licensed service but that has been broadcast on other services in the UK before.

²⁰ 1 hour first run, 6 hours repeats and 2 hours per day of local programming broadcast for the first time on the licensed service but that has been broadcast on other services in the UK before.

the number and range of the programmes made about the area or locality for which the London Live service is licensed.

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

- 1.43 For the reasons summarised at paragraph 1.33 above, ESTV has explained that it does not consider the changes requested in the Variation Request would unacceptably reduce the number of programmes made in the London area.
- 1.44 Whilst no respondents to Ofcom's consultation appeared to comment specifically on this criterion, some indirectly indicated that the changes requested would do this. In particular, because the amount of first-run local programming (and first-run local news and current affairs programming) would reduce from 5.5 hours to 1 hour per day at weekends and to 3.5 hours on weekdays.
- 1.45 We recognise that the number of programmes made in London could reduce as a result of the changes requested, depending on what content London Live decides to broadcast instead. However, we are satisfied that any reduction in the number of programmes made in London would not be unacceptable on the basis that London Live would remain subject to licence commitments to provide:
- an interactive news and entertainment service created in the Licensed Area; and
 - a considerable amount of content made in the Licensed Area.
- 1.46 Having considered ESTV's representations, and the representations of respondents to our consultation, on this criterion, and for the reasons set out above, we are satisfied that, if we were to consent to the departure from the character of the licensed service set out in the Variation Request, it would not unacceptably reduce the number of programmes made in the area or locality for which the London Live service is licensed.

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

- 1.47 ESTV explained in the Variation Request that, in its view, there is no doubt that London Live will continue to meet the needs of those who live and work in the London area. It suggested, in particular, that the changes requested would not result in any significant change to either the number or range of programmes about London and that it did not propose to change the description of its "Programming Output" in the programming commitments annexed to the Licence.
- 1.48 Some respondents to our consultation did however suggest that, if the Variation Request were allowed, the London Live service may not meet the needs of the London area. Reasons given by respondents included that:
- too many reductions have been allowed previously to ESTV's programming commitments and the current level of local programming is already too low to meet the needs of the London area; and
 - the Variation Request would lead to a significantly changed service that would be less likely to provide the benefits to viewers that the local TV system is meant to deliver. In particular, the London Live service would risk becoming a general

entertainment channel in order to maximise advertising revenue, with very little public service benefit to Londoners.

1.49 Whilst we have taken into account the views of respondents to our consultation, we disagree with both of the assertions summarised in the paragraph above. On the first point, we note that when awarding the Licence to ESTV, Ofcom was required to be satisfied that the proposed service would meet the needs of the area or locality where it is received (i.e. the London area). Ofcom considered this criterion carefully and was satisfied, at the time of awarding the Licence, that the London Live service would do this. Whilst there have been a small number of variations to the programming commitments set out in the Licence since its grant (discussed at paragraphs 1.18 above), Ofcom carefully considered each of these and was satisfied that the character of the service would be maintained following each of those changes.

1.50 We also disagree with the second point, namely that London Live would risk becoming a general commercial channel. As explained above, ESTV would, in our view, continue to be required to provide a significant amount of local programming (including first-run local news and current affairs programming) even if the Variation Request were authorised. We are also particularly mindful of the fact that all qualitative (i.e. non-hours-related) commitments would remain unchanged and, in particular, the section describing the “programming output” in the annex to the Licence would not be altered. ESTV would (amongst other things) therefore continue to be required to:

- provide an interactive news and entertainment service created in, for and by those who live and work in the London area;
- include current affairs investigations, campaigns and debates which enable local people to influence the agenda through interactive functionality and live contributions;
- be a launchpad for local people from every community;
- include content about London’s events through partnerships with London’s cultural organisations; and
- include hyper-local programming for 33 London Boroughs.

1.51 Having considered ESTV’s representations, and the representations of respondents to our consultation, on this criterion, and for the reasons set out above, we are satisfied that, if we were to consent to the departure from the character of the licensed service set out in the Variation Request, the London Live service would continue to meet the needs of the area or locality for which it is licensed.

Ofcom’s decision on whether to consent to the departure from the licensed service

1.52 Respondents to our consultation raised a number of broader points. To the extent that we have not already taken these into account in our consideration of the four statutory criteria set out above, we now consider them. The main concerns were that authorising the Variation Request:

- would risk London Live becoming a general commercial channel and therefore frustrate the local TV regime;

- would be unfair on other commercial broadcasters given the benefits bestowed on L-DTPS licensees; and
 - would be unfair on other applicants for the Licence.
- 1.53 We recognise that, if local TV services were able to become general commercial channels which do not provide any locally-relevant programming, this would be inconsistent with the aim of the local TV policy regime. Also, to the extent that local TV operators were able to retain the benefits of being local TV operators (without the costs of providing local programming), this would also risk providing local TV operators with a commercial advantage compared to other broadcasters.
- 1.54 However, as explained above, we consider that, if the Variation Request were authorised, ESTV would continue to be required to provide a large amount of local programming. In particular, it would continue to be required to provide 11.5 hours of locally-relevant programming on weekdays and 9 hours per day at the weekend.
- 1.55 Further, as noted at paragraph 1.28 above, when Ofcom awarded the Licence to ESTV in 2013, it took into account a number of factors beyond the total (quantitative) amount of local programming provided by London Live. If the Variation Request were approved, ESTV's detailed "programming output" requirements would remain unaltered. ESTV would therefore continue to be required to (amongst other things) provide hyper-local programming, be a launch-pad for local people from every local community, and include content about London's events through partnerships with London's cultural organisations.
- 1.56 As a result of the above, we consider that the proposed departure from the character of the licensed service would not lead to London Live becoming a general commercial channel (thereby undermining the local TV regime) or be unfair to commercial broadcasters or other applicants for the London L-DTPS licence.
- 1.57 We note the suggestion by one respondent that, because the Variation Request would constitute a departure from the character of the service, it would necessarily fail the statutory test and Ofcom could not approve it. However, we disagree with this. We also disagree with the suggestion by another respondent that the Variation Request would need to meet the statutory obligations set out in section 18(6) of the 1996 Act (for example, that it would need "*to broaden the range of television programmes available for viewing by persons living or working in that area or locality*") before Ofcom could approve it. The factors set out in section 18(6) of the 1996 Act are factors to which Ofcom must have regard in determining whether and to whom to grant a L-DTPS licence rather than factors which any proposed departure from the character of the service must meet.
- 1.58 We also note that the benefits bestowed upon L-DTPS licensees in relation to EPG prominence, access to spectrum and access to BBC funding are matters decided by Government and, ultimately, Parliament.
- 1.59 Finally, we note that some respondents to our consultation also suggested that ESTV's current programming output is unacceptable, and frequent revisions to programming commitments are not in the public interest. To the extent that respondents are saying that ESTV's programming is falling short of its current programming obligations, there is a separate process open to stakeholders if they have concerns about whether a service is compliant with its current licence

obligations.²¹ In relation to the various revisions to ESTV's licence, Ofcom has considered each variation request on its merits and decided accordingly. Nonetheless, we have additionally been mindful of the cumulative effect of the changes set out in the Variation Request taken together with the changes to which Ofcom has previously consented.

- 1.60 Having carefully considered ESTV's Variation Request and all of the responses to our consultation, and for the reasons set out above, we are satisfied that the departure from the character of the licensed service resulting from the Variation Request (a) would not substantially alter the character of the service, (b) would not unacceptably reduce the number and range of the programmes about the London area, and (c) would not unacceptably reduce the number of programmes made in the London area. We are also satisfied that the service would continue to meet the needs of the London area, and have decided to consent to the Variation Request. This is a finely balanced decision, and we would be concerned if, in future, ESTV were to make further requests for significant changes to its programming commitments which give effect to the character of the London Live service, particularly where those changes impact the amount of local programming provided on the London Live service.
- 1.61 The amended programming commitments are available in Annex 2 of this document.

²¹ In particular, see <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/something-else> for further details, together with Ofcom's Enforcement Guidelines (available at: <https://www.ofcom.org.uk/consultations-and-statements/category-2/draft-enforcement-guidelines/enforcement-guidelines>).

Annex 1

Programming commitments in the current version of the Licence

[See *next page*]

London Live: change to licence obligations

Programming output	<p>The service will:</p> <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. • in addition to the programming commitments set out below, provide, from Year 3 onwards, 2.5 hours per day of local programming that is broadcast for the first time on the licensed service but has been broadcast on other services in the UK before, of which 1.5 hours per day shall be delivered in peak-time (18.00-22.30). 		
Hours of local programming per day	Year 1	Year 2	Year 3 onwards
First run	8 hours per day	8 hours per day	First run: 5.5 hours per day
Repeats	6 hours	6 hours	6 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 See addendum in Annex	2.5 hours per day See addendum in Annex	First run: 1 hour per day See addendum in Annex
Repeats	Nil See addendum in Annex	1.5 hours See addendum in Annex	1.5 hours See addendum in Annex
Hours and scheduling of local news and	Year 1	Year 2	Year 3 onwards

London Live: change to licence obligations

current affairs programming			
First run	<p>Mon-Sun:</p> <p>4.5 hours rolling news per day across breakfast, lunch, early and late evening;</p> <p>current affairs 2 x 30mins per day.</p>	<p>Mon-Sun:</p> <p>5.5 hours rolling news & current affairs per day with 1 hour in peak</p> <p>per day</p>	<p>Mon-Sun:</p> <p>5.5 hours rolling news & current affairs per day with 1 hour in peak</p> <p>per day</p>
repeats	<p>Mon-Sun:</p> <p>Current affairs x 30 minutes.</p>	<p>Mon-Sun:</p> <p>Current affairs x 30 minutes.</p>	<p>Mon-Sun:</p> <p>Current affairs x 30 minutes.</p>
<p>This addendum forms part of the Annex to the Licence</p> <p>The licensee is not permitted in peak-time to schedule teleshopping (defined as television-broadcast direct offers for the supply of goods and services, including immovable property rights and obligations, in return for payment). For the avoidance of doubt, teleshopping also includes direct offers, in return for payment, for gaming and betting (as defined in the Gambling Act 2005) and spread betting.</p>			

Annex 2

Programming commitments in the amended version of the Licence

Programming output	<p>The service will:</p> <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. • in addition to the programming commitments set out below, provide, from Year 3 onwards, 2 hours per day of local programming that is broadcast for the first time on the licensed service but has been broadcast on other services in the UK before, of which 1 hour per day shall be delivered-in peak-time (18.00-22.30). 		
Hours of local programming per day	Year 1	Year 2	Year 3 onwards
First run:	8 hours per day	8 hours per day	First run: 3.5 hours per day weekday & 1 hour per day weekends
Repeats:	6 hours	6 hours	6 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 See addendum in Annex	2.5 hours per day See addendum in Annex	First run: 1 hour per day See addendum in Annex
Repeats:	Nil See addendum in Annex	1.5 hours See addendum in Annex	Nil
	Year 1	Year 2	Year 3 onwards

London Live: change to licence obligations

Hours and scheduling of local news and current affairs programming First run:	Mon-Sun: 4.5 hours rolling news per day across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.	Mon-Sun: 5.5 hours rolling news & current affairs per day with 1 hour in peak per day	Mon-Fri: 3.5 hours rolling news & current affairs per weekday with 1 hour in peak per day. Sat-Sun 1 hour per day on Saturday and Sunday.
	Mon-Sun: Current affairs x 30 minutes.	Mon-Sun: Current affairs x 30 minutes.	Mon-Sun: Current affairs x 30 minutes.
Repeats:			
This addendum forms part of the Annex to the Licence			
The licensee is not permitted in peak-time to schedule teleshopping (defined as television-broadcast direct offers for the supply of goods and services, including immovable property rights and obligations, in return for payment). For the avoidance of doubt, teleshopping also includes direct offers, in return for payment, for gaming and betting (as defined in the Gambling Act 2005) and spread betting.			