

## Local TV decision: ESTV Limited change request

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

On 21 November 2019, ESTV Ltd made a request to Ofcom for a variation to the programming commitments in the Licence. The details are set out here (changes in red font).

### Programming Commitments for London Live – Proposed

#### Programming output

The service will:

- 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, 1 hour per day, in peak-time (18.00-22.30), 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~~

Hours of local programming per day	Year 1	Year 2	Year 3 onwards
<b>First run:</b>	8 hours per day	8 hours per day	First run: 3.5 hours per day weekday & 1 hour per day weekends
<b>Repeats:</b>	6 hours	6 hours	<del>6 hours</del> Nil
<b>Hours of local programming per day in peak-time (18:00-22:30)</b> <b>First run:</b>	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
<b>Repeats:</b>	Nil See addendum in Annex	1.5 hours See addendum in Annex	Nil
<b>Hours and scheduling of local news and current affairs programming</b> <b>First run:</b>	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 day weekday with 1 hour in peak per day.  Sat-Sun  1 hour per day on Saturday and Sunday.
<b>Repeats:</b>	Mon-Sun:  Current affairs x 30 minutes.	Mon-Sun:  Current affairs x 30 minutes.	Mon-Sun:  <del>Current affairs x 30 minutes.</del> Nil

**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.

## **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.<sup>1</sup> This requirement is reflected in Condition 5(1) of the Licence and the programming commitments set out in the Licence. Ofcom has the power to vary the conditions of a licence by notice.<sup>2</sup>

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 of the character of the service.<sup>3</sup> 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 some of its broadcasting functions to a number of senior Ofcom executives in the Content and Media Policy Group and Legal Group. Those individuals, on their own or together, have responsibility for deciding on the award of, and proposals for variations to, L-DTPS licences.

On 6 March 2020, Ofcom’s Head of Radio & Broadcast Licensing Policy and Director, Broadcast Licensing & Programme Operations (the “Decision-makers”) considered the variation request submitted by ESTV Ltd (“London Live”) on 21 November 2019 (the “Variation Request”). The Decision-makers noted ESTV’s argument that the character of service would not be altered since the repeated programming it proposed to cease providing is scheduled post-midnight, but were not persuaded by this given that the exact scheduling of repeated programming is a choice left to the broadcaster.

Nevertheless, the Decision-makers considered that, taken in the round, the proposed change to the programming output was of a minor nature. Whilst repeated local and current affairs programming can contribute to the overall ‘look and feel’ of a service, we consider that it is not as important as first-run local content. ESTV will still provide the same amount of overall first-run local hours, and the existing commitment to peak-time content and first-run local news and current affairs programming will remain.

After careful deliberation, the Decision-makers decided that the character of the service overall would still be maintained following the requested variation, and thus the requested variation would not constitute a departure from the character of the service. As such, the request was approved.

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

<sup>2</sup> Section 4(4) of the 1996 Act

<sup>3</sup> Section 19 of the 1996 Act as modified by the Local Television Programme Services Order 2012