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# London Live: proposed change to its programming commitments

Statutory consultation under section 19(3C) of the  
Broadcasting Act 1996

Consultation

Publication date: 14 September 2016

Closing Date for Responses: 13 October 2016

## About this document – Corrected Version

ESTV Limited currently operates a local television service in the London area known as 'London Live'.

It has requested that Ofcom change some of the programming commitments for that service. Broadly speaking, these describe the type and volume of locally-relevant programming which ESTV Limited is required to provide and form part of its local TV licence.

Ofcom has decided that the changes requested by ESTV Limited would amount to a departure from the character of the licensed service. Under the statutory scheme, Ofcom is therefore required to consult on the request and is unable to consent to the changes requested unless it is satisfied that the departure would satisfy a number of criteria set out in legislation. These include, for example, that the departure should not substantially alter the character of the service or unacceptably reduce the number and range of programmes made about the local area.

Ofcom is therefore publishing this consultation in order to seek the views of persons who might be affected by the requested changes, particularly their views on whether the changes requested by ESTV Limited would satisfy the criteria referred to above.

Ofcom will consider any responses to this consultation before deciding whether or not to consent to the changes requested by ESTV Limited.

**CORRECTION:** Please note that Ofcom has replaced the version of the consultation document originally published with this corrected version. The only changes Ofcom has made in the corrected version are to table 2.

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## Section 1

# The proposed variation

## Summary

- 1.1 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.
- 1.2 With this licence, ESTV operates a local television service known as ‘London Live’. This service was launched on 31 March 2014 and is now in its third year of broadcasting.
- 1.3 On 2 September 2016, ESTV submitted a licence variation request to Ofcom (the “Variation Request”). The Variation Request concerns the programming commitments, particularly those relating to first-run local programming, in the London L-DTPS licence.
- 1.4 In this section, we explain:
  - 1.4.1 the legal framework applicable to Ofcom’s consideration of changes to programming commitments in L-DTPS licences; and
  - 1.4.2 the changes requested by ESTV in the Variation Request; and
  - 1.4.3 the issues that we are seeking views on in this consultation. The closing date for responses to this consultation is **13 October 2016**.

## Legal framework

- 1.5 Section 19(3A)(c) of the Broadcasting Act 1996 (the “Act”) requires Ofcom to include in L-DTPS licences such conditions as appear to it to be appropriate for securing that the character of the licensed service, as proposed by the licence holder when making the application for that licence, is maintained for the duration of the licence.
- 1.6 Ofcom has therefore included, in condition 5(1) of ESTV’s L-DTPS licence a requirement that, for the duration of the licence, ESTV maintain the character of the ‘licensed service’ in accordance with the programming commitments set out in the annex to the licence.
- 1.7 The circumstances in which Ofcom may consent to a departure from the character of the licensed service are limited by section 19(3B) of the Act. As a result, condition 5(2) of ESTV’s licence provides that Ofcom may, following the procedure set out in the Act, only consent to a departure from the character of the licensed service if it is satisfied that:
  - 1.7.1 the departure would not substantially alter the character of the licensed service;
  - 1.7.2 the departure would not unacceptably reduce the number and range of programmes about the area or locality for which the licensed service is licensed;

- 1.7.3 the departure would not unacceptably reduce the number of programmes made in the area or locality for which the licensed service is licensed; and
  - 1.7.4 the service would continue to meet the needs of the area or locality for which the licensed service is licensed.
- 1.8 Before deciding whether to consent to a departure from the character of a licensed service on any of the grounds set out above, Ofcom is required by section 19(3C) of the Act to publish a notice specifying:
- 1.8.1 the proposed departure; and
  - 1.8.2 the period in which representations may be made to Ofcom about the proposal. This period must end later than 28 days after the publication of the notice.

## The Variation Request

- 1.9 A full non-confidential copy of the Variation Request is set out in Annex 3.
- 1.10 By way of summary, ESTV has requested in the Variation Request that Ofcom consent to the amendments to its current programming commitments which are marked in red in Table 1 below.

**Table 1: Proposed changes against ESTV’s current programming commitments**

<b>Programming output</b>	<p>The service will:</p> <ul style="list-style-type: none"> <li>• be an interactive news and entertainment service created in, for and by those who live and work in the Licensed Area;</li> <li>• 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;</li> <li>• include current affairs investigations, campaigns and debates will enable local people to influence the agenda through interactive functionality and live contributions;</li> <li>• 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;</li> <li>• include live and pre-recorded content about London’s events through partnerships with London’s cultural organisations;</li> <li>• include archived factual, entertainment and lifestyle programming from London’s past;</li> <li>• 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</li> <li>• 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.</li> <li>• in addition to the programming commitments set out below, provide, from Year 3 onwards, <del>2.5</del> 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 <del>1.5</del> 1 hour per day shall be delivered-in peak-time (18.00-22.30).</li> </ul>
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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: <del>5-5</del> 3.5 hours per day weekday & 1 hour per day weekends
<b>Repeats:</b>	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
<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	<del>1.5 hours</del> See addendum in Annex Nil
Hours and scheduling of local news and current affairs programming	Year 1	Year 2	Year 3 onwards
<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	<del>Mon-Fri Sun:</del>  <del>5-5</del> 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.
<b>Repeats:</b>	Mon-Sun:  Current affairs x 30 minutes.	Mon-Sun:  Current affairs x 30 minutes.	Mon-Sun:  Current affairs x 30 minutes.
<b>This addendum forms part of the Annex to the Licence</b>			
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.			

- 1.11 The changes marked in Table 1 above are shown against the programming commitments currently in force, rather than those originally included in ESTV’s L-DTPS licence.<sup>1</sup>
- 1.12 As a result, we have highlighted in Table 2 below the changes requested in the Variation Request as against the programming commitments in ESTV’s original L-DTPS licence. Note that text marked in green shows those changes to the original licence to which Ofcom has already consented, and which are therefore not included within the scope of this consultation. Text marked in red shows the changes requested by ESTV in the Variation Request, and which are therefore within the scope of this consultation.

<sup>1</sup> Ofcom has previously agreed to four changes to the programming commitments contained in ESTV’s L-DTPS licence. Details of these changes are available on Ofcom’s website: <http://licensing.ofcom.org.uk/tv-broadcast-licences/current-licensees/local-tv/london/>.

**Table 2: Currently proposed changes shown against ESTV’s original programming commitments (green text shows changes previously agreed by Ofcom, red text shows currently proposed changes)<sup>2</sup>**

Programming Commitments for London Live			
<b>Programming output</b>	<p>The service will:</p> <ul style="list-style-type: none"> <li>• be an interactive news and entertainment service created in, for and by those who live and work in the Licensed Area;</li> <li>• 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;</li> <li>• include current affairs investigations, campaigns and debates will enable local people to influence the agenda through interactive functionality and live contributions;</li> <li>• 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;</li> <li>• include live and pre-recorded content about London’s events through partnerships with London’s cultural organisations;</li> <li>• include archived factual, entertainment and lifestyle programming from London’s past;</li> <li>• 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</li> <li>• 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.</li> <li>• <span style="color: green;">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 hour per day shall be delivered in peak-time (18:00-22.30)</span></li> </ul>		
<b>Hours of local programming per day</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3 onwards</b></u>
<b>First run:</b>	8 hours per day	<span style="color: green;">9</span> 8 hours per day	<span style="color: red;"><del>10</del><sup>3</sup> 3.5 hours per day weekday and 1 hour per day weekends</span>
<b>Repeats:</b>	<span style="color: green;"><del>10</del></span> 6 hours per day	<span style="color: green;">9</span> 6 hours per day	<span style="color: green;">8</span> 6 hours per day

<sup>2</sup> To see the consecutively agreed changes in chronological order, see the link at footnote 1

<sup>3</sup> Ofcom has already consented to a reduction from 10 to 5.5 hours per day

<b>Hours of local programming per day in peak-time (18.00-22.30)</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3 onwards</u></b>
<b>First run:</b>	3 hours per day see addendum in annex	<del>3.5</del> 2.5 hours per day see addendum in annex	<del>3.5</del> 1 hours per day see addendum in annex
<b>Repeats:</b>	<del>1.5 hours per day</del> Nil	<del>1</del> 1.5 hours per day see addendum in annex	<del>1 hour per day</del> <sup>4</sup> Nil
<b>Hours and scheduling of local news and current affairs programming</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3 onwards</u></b>
<b>First run:</b>	<p>Mon – Sun: 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><del>Mon-Fri: Bulletins of at least 1 minute duration hourly and half-hourly</del></p> <p><del>Sat-Sun: Bulletins of at least 1 minute hourly</del></p>	<p>Mon-Sun: <del>4.5</del> 5.5 hours rolling news and current affairs per day with 1 hour in peak per day across breakfast, lunch, early and late evening;</p> <p><del>Current affairs 2 x 30mins per day.</del></p> <p><del>Mon-Fri: Bulletins of at least 1 minute duration hourly and half-hourly</del></p> <p><del>Sat-Sun: Bulletins of at least 1 minute hourly</del></p>	<p>Mon-<del>Sun</del> Fri: <del>4.5 hours rolling news across breakfast, lunch, early and late evening;</del> Current affairs 2x 30 mins per day.<sup>5</sup></p> <p><del>Mon-Fri: Bulletins of at least 1 minute duration hourly and half-hourly</del></p> <p><del>Sat-Sun: Bulletins of at least 1 minute hourly</del></p> <p><del>5.5</del><sup>6</sup> 3.5 hours rolling news and current affairs per weekday with 1 hour in peak per day.</p> <p><del>Sat-Sun 1 hour per day on Saturday and Sunday</del></p>
<b>Repeats:</b>	<p>Monday – Sun:</p> <p>Current affairs x 30 minutes.</p>	<p>Monday – Sun:</p> <p>Current affairs x 30 minutes.</p>	<p>Monday – Sun:</p> <p>Current affairs x 30 minutes.</p>
<b>This addendum forms part of the Annex to the Licence</b>			
<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>			

## Ofcom’s response to the Variation Request

1.13 On 7 September 2016, Ofcom decided that the changes proposed 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.

<sup>4</sup> As shown in table 1, Ofcom has already consented to an increase from 1 hour per day to 1.5 hours per day (subject to the addendum in annex)

<sup>5</sup> As shown in table 1, Ofcom has already consented to a merger of the rolling news with current affairs commitments, thereby changing this from 4.5 hours per day to 5.5 hours per day

<sup>6</sup> See footnote 5.



- 1.14 In reaching this decision, Ofcom was mindful of the cumulative effect of the changes set out in the Variation Request together with the changes to which Ofcom has previously consented<sup>7</sup>.
- 1.15 As a result, Ofcom is unable to consent to the proposed changes unless it is satisfied that each of the four criteria set out at paragraph 1.7 above would be met.

### **Issues for consultation**

- 1.16 As a result of the above, Ofcom is therefore seeking views in this consultation on whether to consent to the proposed changes and, in particular, the extent to which those changes would (or would not) satisfy the four criteria set out at paragraph 1.7 above.
- 1.17 Ofcom will consider any responses to this consultation before deciding whether or not to consent to the changes requested by ESTV.

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<sup>7</sup> See footnote 1.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, **by 5pm on 13 October 2016**.
- A1.2 We strongly prefer to receive responses via the online form at <http://stakeholders.ofcom.org.uk/consultations/london-live-programming-commitments/>. We also provide a cover sheet (<http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>) for responses sent by email or post; please fill this in, as it helps us to maintain your confidentiality, and speeds up our work. You do not need to do this if you respond using the online form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [local.tv@ofcom.org.uk](mailto:local.tv@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet (<http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>).
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- ESTV consultation  
F.A.O. Leen Petré  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 If you would like to submit your response in an alternative format (e.g. a video or audio file), please contact Leen Petré on 020 7981 2000, or email [local.tv@ofcom.org.uk](mailto:local.tv@ofcom.org.uk).
- A1.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.7 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.8 It would be helpful if your response could include direct answers to the questions asked in the consultation document. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.9 If you want to discuss the issues and questions raised in this consultation, please contact Leen Petré on 020 7981 2000, or by email to [local.tv@ofcom.org.uk](mailto:local.tv@ofcom.org.uk).

## Confidentiality

- A1.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as we receive them.
- A1.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A1.14 Following this consultation period, Ofcom plans to publish a statement in November 2016. This statement will set out Ofcom's final decision on whether or not to consent to the changes requested by ESTV in the Variation Request.
- A1.15 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details, please see <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

- A1.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.17 If you have any comments or suggestions on how we manage our consultations, please call our consultation helpdesk on 020 7981 3003 or email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Steve Gettings  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [steve.gettings@ofcom.org.uk](mailto:steve.gettings@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

## Ofcom has seven principles that it follows for every public written consultation:

### Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

### During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

### After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 3

# The Variation Request (non-confidential)

## ESTV Request for Licence Variation<sup>8</sup>

### Introduction

1. ESTV Ltd (“ESTV”) is requesting a licence variation to its Programming Commitments for the licensed service *London Live* (the local TV service for London, L-DTPS000015). These Programming Commitments are set out in the Annex to this document. Requested changes are in red.
2. ESTV was awarded a licence for a local digital television programme service (“L-DTPS”) by Ofcom on 29 January 2013. The service, *London Live*, was launched on 31 March 2014.
3. ESTV has now been transmitting for almost two and a half years and is well into its third year of broadcast. However, as Ofcom is aware the market for local TV remains extremely challenging. ✎
4. This request for a variation must be seen in light of the overall evolution of the sector as it grows and understands how the market and particularly the audience reacts to its services. Local TV is new to the UK and no one fully appreciated how challenging it would be. ESTV therefore welcomes Ofcom’s recent statement to the industry that it will act responsively and flexibly to licensee’s concerns.
5. ESTV is aware that it is likely that Ofcom will view this request as “*a departure from the character of the licensed service*” (as set out in Section 19(3B) of the Broadcasting Act 1996 and Condition 5 of the licence). While ESTV considers that the proposals are relatively minimal and the character of the service will be maintained, it nevertheless recognises Ofcom’s likely position and has taken it into account in submitting this application.
6. If it is Ofcom’s view that ESTV’s request is a departure from the character of the service, ESTV believes that it is an acceptable and necessary one and in accordance with the legislation (Section 19(3B)(a) to (d) of the Broadcasting Act 1996). It should therefore be granted.

### Summary

7. ESTV is requesting a variation to its Programming Commitments for its L-DTPS *London Live* as detailed in the Annex to its licence. When taken together, ESTV considers this variation is acceptable under the terms of the Broadcasting Act 1996 (“the 1996 Act”).
8. ESTV maintains that this request for a variation in ESTV’s licence conditions evidently:

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<sup>8</sup> Note that confidential parts of the request have been redacted by ESTV. This is indicated with the “✎” symbol.

- does not “substantially alter the character of the service”;
  - does not “unacceptably” reduce the number and range of programmes about the London area or locality;
  - does not “unacceptably” reduce the number of programmes made in the London area or locality; and
  - ensures that the service will continue to meet the needs of the London area and locality.
9. Ofcom should be assured that the licence variation requested will not be a significant change from the character of our service, but will in fact give ESTV the opportunity to invest further in quality production in and about London. It will ensure that ESTV is able to focus better on commissions with high impact and maintain a high quality news and current affairs service. The changes we are seeking will ensure that we can invest more per hour in news and current affairs than is currently the case and at a time when the audience is at its greatest.
10. Overall the programming on *London Live* will remain London-centric and provide a significant amount of local content including news and current affairs. This is the key, we believe, to our distinctiveness and ensures the character of our service is not substantially altered.
11. In summary ESTV is requesting the following variation (see Annex 1 to this statement for full details):
- A change from 5.5 hours of news and current affairs programming per day to 3.5 hours of news and current affairs per day, with 1 hour on Saturday and 1 hour on Sunday. Importantly, the new requirement for 1 hour in peak-time per weekday is to remain.
  - A change from 2.5 hours per day of local programming that is broadcast first time on the licensed service to 2 hours, with 1 hour in peak (from 1.5 hours).
  - The removal from peak the requirement for repeats.
12. As Ofcom can see, the amount of news and current affairs in peak-time remains unchanged. ESTV believes this to be an important safeguard and helps ensure that the character of the service is not substantially altered. *London Live*'s peak-time news gains the highest audience of its news programmes. ✍ The commitment to an hour's news/current affairs in peak-time on weekdays (and news in general) is still greater than any other commercial public service television broadcaster.
13. This variation, if approved, ensures that the total amount of news and current affairs in peak-time, where it is most visible and watched, is maintained. *London Live* would still continue to deliver a significant amount of news and current affairs and local programming – almost exclusively centered on London. The overall amount of local output will be 11.5 hours per weekday (including repeats).

## **Background**

14. ✍

15. It is worth noting that an initial projection of audience share for Local TV was between 2% and 2.5 % (*'Commercially viable Local Television in the UK'* by Nicholas Shott). In applying for a local TV licence, ESTV took a conservative estimate and envisaged a 0.7% of the audience share. However, in our third year of transmission we are achieving on average between 0.5-0.6%.



16. ✎

### **Request for Licence Variation**

17. ✎

18. As stated above, we believe that our request for a licence variation does not substantially alter the character of our service or amount to an unacceptable reduction in the number or range of programmes made in or about London and its locality (as set out in Section 19(3B) of the 1996 Act). Further, this request must be seen in light of the behavior of *London Live*'s audiences and how the business needs to develop.

### **News and Current Affairs and local programming**

19. ESTV is looking to vary the amount of news and current affairs it currently broadcast. At present, ESTV is required to transmit 5.5 hours of news and current affairs per day. This amount has not changed since its inception. Over a year, this aggregates to around 2,000 hours. As you will appreciate, this is simply not sustainable. By comparison, it is interesting to note that Channel 4 is required to transmit no less than 208 hours of news each calendar year in peak (which averages at about 34 minutes/day). It is also obliged to broadcast no less than 208 hours of current affairs of which 80 hours must be in peak viewing time. Channel 4 is the UK's pre-eminent commercial public service broadcaster. It is a non-profit making, publicly owned and privately run organisation and in complete contrast to ESTV's local television service *London Live*. It is also, of course, a national broadcaster with a corresponding advertising market.

20. Meanwhile, a Channel 3 licensee (e.g. North-West of England) is required to show 365 hours per year of (national and international) news of which 125 hours must in peak-time. For current affairs, it must transmit at least 43 hours per year (35 hours in peak). Channel 3 regional requirements also oblige licensees to provide just over 150 hours of regional news a year (117 hours in peak-time).

21. When ESTV's licence obligations are put in such context, the reasons for our request becomes apparent. ESTV's proposal is to provide 3.5 hours of news and current affairs each weekday - and importantly maintain an hour in peak. On weekends we propose an hour of news and current affairs per day. This is still a significant amount of news and current affairs. It will provide in excess 1000 hours of news and current affairs a year.

22. Ofcom should be aware that ESTV - as previously stated - continues to be committed to local news and sees it as the backbone to any local TV service. ✎

23. ✎

24. ESTV intends to continue to provide a significant quantity of news and current affairs every day and in peak-time. There is a corresponding reduction in "Hours of local programming per day" (see Annex 1). ESTV will also continue to broadcast 1 hour in peak time content that is broadcast for the first time on the licensed service.

25. The quality of our news and current affairs output is extremely important to ESTV. It is essential to the licensee that we get the balance between quantity and quality right. We must ensure that our output remains of high quality, so we are concerned that continuing to hold ESTV to its original licence commitment of around 2,000 hours of

news and current affairs a year would inevitably result in a reduction in quality. This will be of little benefit to our audience. ✎

26. ESTV believes that by permitting this change, we can continue to focus our finite resources on news and current affairs for and about the locality. The cost per hour of producing our news and current affairs remains substantially disproportionate to the audience it achieves. Nevertheless, we remain committed to this genre of programming and recognise that it is an important characteristic of local television.
27. We have also requested a very minor change in our requirement to broadcast content that is broadcast on the first time on our service (but not necessarily in the UK). We have proposed a 30 minute reduction. While this is clearly not significant in terms of a variation, it will help ESTV – to a very limited extent – achieve some form of sustainability.

### **The effect on the character of the service**

28. In order for Ofcom to permit these proposed changes, it must satisfy itself that the proposals do not “substantially alter the character of the service” (Section 19(3B)(a) of the 1996 Act). ESTV believes that under no circumstances can the changes put forward here be viewed as substantially altering the character of the service.
29. ESTV considers that for a service to be “substantially” altered, then - by definition - it would be need to be, in some form, unrecognisable from its current offering. For example, more than 50% of the schedule would need to change. ESTV does not consider that the variation put forward falls into this category. The service will be very much identifiable as *London Live* as presently on air. In particular, when most viewers are watching the service (early morning and in the evening) there will be little change. The service will continue to provide news, current affairs and entertainment about London.
30. It should be noted, importantly, that the proposed changes do not affect or do not require a change in the description of our programming output as set out in the programming commitments in our licence. We believe that the overwhelming majority of *London Live* viewers will see little change in the service. It will remain a news and entertainment channel for the local community (Londoners who live and work in the capital) with a well-balanced mixture of news, current affairs, local content, entertainment and factual programming. It will continue to produce current affairs investigations, ‘what’s on’, archived factual and lifestyle content. The service will continue to serve and understand the needs of the local population and represent and cover London’s diverse communities. The programming will remain of high quality and cover a significant range of subjects. Importantly, we do not consider that viewers would be affected by the changes to the service. □
31. The main characteristics of the service will not be significantly altered, if this licence variation was granted. The immediacy of the service, the insights and inclusivity as well as its localism, impartiality and integrity. All characteristics of the service which formed part of our application.
32. ESTV does not consider that the character of a service should be viewed in simple mathematical terms e.g. the number of hours of a particular genre it broadcasts (also please see below). The character is a little more intangible and subtle. The character concerns the feel or identity of the channel. It should always be remembered that the purpose of the legislation is to provide protection to the viewers and ensure that the local nature of the service is maintained. We also believe that the number of viewers to

a particular type of programming is also extremely relevant in judging whether the character has changed. If some programming is receiving a small audience, then we would argue that changing or modifying that programming cannot amount to a departure of the service overall and even if it did, it could not be viewed as significant.

33. It is important to note that the channel will retain the same 'feel' and the output will be almost exclusively London-centric.

### **The number and range of programmes about and made in the area or locality**

34. The legislation requires that any change to the licence must not "unacceptably reduce the number and range of programmes about the area or locality" and "unacceptably reduce the number and range of programmes made in the area or locality" (Section 19(3B)(b) and (c) respectively of the 1996 Act). We appreciate that what is and is not acceptable is a matter of discretion. Nevertheless, when taken in the round, we believe that the variation requested here does not amount to an "unacceptable" reduction in either the number or range of programmes about or made in the London area.
35. Overall local programming will go from 14 hours a day (including repeats) to 11.5 hours a day (including repeats and local content broadcast for the first time on the licensed service). This reduction of just under 18% cannot be described as a substantial change which would be unacceptable.
36. While we acknowledge that there is a greater reduction in news and current affairs during weekdays (around 35%), we again do not consider this to be significant or unacceptable. This is evidently the case in absolute quantitative terms. But also in terms of the overall 'feel' or character of the service, we do not believe that the proposal is unacceptable. Most viewers watch *London Live* from 18:00 onwards or in the morning. As such, the vast majority of our audience would hardly recognise any difference to our output and therefore we do not consider that this variation could be classified as unacceptable. We believe that the most important aspect of our service is to provide high quality news and current affairs at a time when our audience is watching. Permitting ESTV to focus its resources on peak time news programming is – we believe – the most effective way to ensure we build an audience for our news and other local programming.
37. As stated above, *London Live* delivers significantly more news and current affairs than many other national and local public service broadcasters. In some cases this amounts to more than five times. We do not view a limited reduction as proposed could be viewed as unacceptable when seen in this context.
38. Whether any reduction is considered to be unacceptable or not is a matter for Ofcom and we note that there is no definition in the legislation or significant precedent for Ofcom to rely on. However, we consider that for the reasons given above, there is no reasonable interpretation of our proposals that would result in them being viewed as unacceptable.

### **The needs of the area or locality**

39. Finally, we understand that for Ofcom to grant any variation to a local TV licence, it must ensure "that the service would continue to meet the needs of the area of locality which the service is licensed" (Section 19(3B)(d) of the 1996 Act).
40. There is no doubt in our view that *London Live* will continue to meet the needs of those who live and work in the licensed area. This limited variation does not see any

significant change in either the number or range of programmes about London. There are no proposals to change the description of our 'Programming Output' in our licence and the character of the service is not substantially altered.

41. 

**Conclusions**

42. 

2 September 2016

**Annex 1**

ESTV's current licence commitments as set out in its local digital television programme service licence.

The requested variation is set out in red.

<b>Programming output</b>	The service will:		
	<ul style="list-style-type: none"> <li>• be an interactive news and entertainment service created in, for and by those who live and work in the Licensed Area;</li> <li>• 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;</li> <li>• include current affairs investigations, campaigns and debates will enable local people to influence the agenda through interactive functionality and live contributions;</li> <li>• 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;</li> <li>• include live and pre-recorded content about London's events through partnerships with London's cultural organisations;</li> <li>• include archived factual, entertainment and lifestyle programming from London's past;</li> <li>• 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</li> <li>• 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.</li> <li>• in addition to the programming commitments set out below, provide, from Year 3 onwards, <b>22.5</b> 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 <b>4.5</b> hours per day shall be delivered in peak-time (18.00-22.30).</li> </ul>		
<b>Hours of local programming per day</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3 onwards</b>
<b>First run:</b>	8 hours per day	8 hours per day	First run: <b>35.5 hours per day weekday &amp; 1 hour per day weekends</b>
<b>Repeats:</b>	6 hours	6 hours	6 hours
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3 onwards</b>

<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
<b>Repeats:</b>	Nil See addendum in Annex	1.5 hours See addendum in Annex	<del>1.5 hours</del> <del>See addendum in Annex</del>
<b>Hours and scheduling of local news and current affairs programming</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3 onwards</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
<b>Repeats:</b>	Mon-Sun:  Current affairs x 30 minutes.	Mon-Sun:  Current affairs x 30 minutes.	Mon-Sun:  Current affairs x 30 minutes.
<b>This addendum forms part of the Annex to the Licence</b>			
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.			

### ADDENDUM TO ANNEX TO LICENCE NO L-DTPS000015BA/3

#### 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.