



# Section 400 Licence Fees and Penalties Account

Year ended 31 March 2012

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## SECTION 400 ACCOUNTS: REVIEW OF 2011/12

### Background

Under Section 400 of the Communications Act 2003, Ofcom is required to collect fees and payments. The revenue collected is from three sources:

- Wireless Telegraphy Act licence fees;
- Additional Payments from television and radio licensees; and
- Financial penalties.

These monies are passed to HM Treasury, the Department of Finance and Personnel - Northern Ireland (DFPNI) and to the Treasuries of the Isle of Man, the Bailiwick of Jersey, and the Bailiwick of Guernsey under Statutory Instrument 1991, Numbers 998, 1710 and 1709 respectively, either directly or via the Department for Business, Innovation and Skills (BIS), and the Department of Culture, Media and Sport (DCMS) as Ofcom's sponsor body. The role of sponsor body was re-assigned to DCMS from BIS from 01 April 2011.

There are no sums included in these accounts under Section 400(1b) of the Act, relating to bids for the allocation of telephone numbers, because no amounts were received in the year.

In total Ofcom passed £275.5m (2010/11: £197.0m) to the public purse, which is outlined below.

### Wireless Telegraphy Act licence fees

On 31 March 2012 there were 51,085 (2010/11: 49,069) Wireless Telegraphy Act (WT Act) licences under issue, divided into a number of categories. WT Act licences are held by a wide variety of spectrum users, from taxi companies to mobile phone operators and television and radio broadcasters.

In 2011/12 Ofcom passed £269.2m (2010/11: £187.6m) collected from WT Act licensees and the interest earned on cash balances held to DCMS. The remaining 2010/11 WT Act funds were paid across to BIS (£0.04m).

### Additional Payments

The Broadcasting Act 1990 required that certain television and radio licences should be awarded after a process of competitive tender. The applicable licences for the 2011/12 accounts are the television programmes services for Channel 3, Channel 5, commercial additional services licences and the national radio and additional services licences.

Holders of these licences are required to make additional payments to Ofcom. These payments are made up of two components: a pre-determined annual fixed payment (known as cash bids) which is increased annually in line with RPI; and a fee based on a percentage of the broadcasters' advertising and sponsorship revenue (percentage of qualifying revenue, PQR).

In 2011/12 Ofcom received £3.0m (2010/11: £9.2m) in additional payments from broadcasters. The cash bid element totalled £1.2m (2010/11: £4.1m) and payments generated from the percentage of qualifying revenue were £1.8m (2010/11: £5.1m).

The overall reduction in additional payments and cash bids highlights a reduction in the terms of Channel 3 and 5 licence holders to nominal terms following the 2010/11 licence review and the trend

of increasing penetration of digital technologies in UK homes. The new terms reflect the decreasing scarcity value of analogue spectrum resulting from the growth in digital broadcasting.

### **Financial penalties**

Under the Communications Act 2003 and the Broadcasting Act 1990 & 1996, Ofcom has the power to fine individuals/organisations for breaches of a code or licence terms.

During 2011/12 Ofcom collected fines totalling £3.2m (2010/11: £0.2m). The material increase is primarily a result of financial penalties imposed in the telecoms sector due to contravention of General Condition 11.1 under Section 94 of the Communications Act 2003 in relation to end-user billing.

A list of penalties imposed during 2011/12 is published on Ofcom's website and can be found at: <http://www.ofcom.org.uk/about/annual-reports-and-plans/financial-penalties/financial-penalties-imposed-for-the-period-2011-12/>

Section 400 Licence Fees and Penalties do not form part of Ofcom's reported revenue, and all receipts on the face of these accounts were excluded from revenue in Ofcom's Financial Statements.

All monies were passed to HM Treasury and, where appropriate, to the DFPNI, and the Treasuries of the Isle of Man, Jersey and Guernsey.

### **Auditors**

These financial statements are audited by the Comptroller and Auditor General. So far as the Accountable Officer is aware, there is no relevant audit information of which the National Audit Office is unaware, and the Accountable Officer has taken all the steps that he ought to have taken to make himself aware of any relevant audit information and to establish that the auditors are aware of that information.

**Ed Richards**  
**Chief Executive**  
**Office of Communications**

**19 June 2012**

## STATEMENT ON OFCOM'S RESPONSIBILITIES WITH RESPECT TO THE FINANCIAL STATEMENTS

Under Section 400(4) of the Communications Act 2003 Ofcom is required to prepare a statement of accounts for each financial year in respect of the Licence Fees & Penalties listed in Section 400(1), and the payment of such receipts to the Consolidated Funds of the United Kingdom and Northern Ireland respectively. The accounts also show payments to the Treasury of the Bailiwick of Jersey, the Treasury of the Bailiwick of Guernsey, and the Treasury of the Isle of Man.

The accounts are prepared on a cash basis and must properly present the receipts and payments for the financial year, and the cash balances held at the beginning and end of the year.

As the senior full time official of Ofcom, the Chief Executive is the Accountable Officer for these accounts. His relevant responsibilities as Accountable Officer include responsibility for the propriety and regularity of the public finances for which he is responsible and for the keeping of proper records. The Chief Executive has specific responsibilities for ensuring that the terms of the Financial Memorandum issued by the Secretaries of State are complied with.

## THE CERTIFICATE AND REPORT OF THE COMPTROLLER AND AUDITOR GENERAL TO THE HOUSES OF PARLIAMENT

I certify that I have audited the financial statements of the Office of Communications Section 400 Licence Fees and Penalties for the year ended 31 March 2012 under the Communications Act 2003. The financial statements comprise: the Receipts and Payments Account, Statement of Cash Balances and the related notes. These financial statements have been prepared under the accounting policies set out within them.

### Respective responsibilities of the Office of Communications, Chief Executive and Auditor

As explained more fully in the Statement of the Office of Communications Responsibilities with respect to the financial statements, the Office of Communications and the Chief Executive as Accountable Officer are responsible for the preparation of the financial statements in accordance with Section 400(4) of the Communications Act 2003 and the Secretaries of State directions made there under. My responsibility is to audit, certify and report on the financial statements in accordance with the Communications Act 2003. I conducted my audit in accordance with International Standards on Auditing (UK and Ireland). Those standards require me and my staff to comply with the Auditing Practices Board's Ethical Standards for Auditors

### Scope of the audit of the financial statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the basis of accounting is appropriate to the Office of Communications Section 400 Licence Fees and Penalties account circumstances and has been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Office of Communications and the overall presentation of the financial statements.

In addition, I am required to obtain evidence sufficient to give reasonable assurance that the receipts and payments recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

### Opinion on Regularity

In my opinion, in all material respects the receipts and payments recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

### Opinion on financial statements

In my opinion:

- the financial statements properly present the receipts and payments of the Office of Communications Section 400 Licence Fees and Penalties account for the year then ended; and
- the financial statements have been properly prepared in accordance with Section 400(4) of the Communications Act 2003 and the Secretaries of State directions made there under.

**Opinion on other matters**

In my opinion:

- the information given in the section entitled, "Section 400 Accounts: Review of 2011/12" for the financial year for which the financial statements are prepared is consistent with the financial statements.

**Matters for which I report by exception**

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- adequate accounting records have not been kept; or
- the financial statements are not in agreement with the accounting records or returns; or
- I have not received all of the information and explanations I require for my audit.

**Report**

I have no observations to make on these financial statements.

**Amyas C E Morse  
Comptroller and Auditor General**

National Audit Office  
157-197 Buckingham Palace Road  
Victoria  
London  
SW1W 9SP

**Date:**

**RECEIPTS AND PAYMENTS ACCOUNTS**  
for the year ended 31 March 2012

	Notes	Year Ended 31 March 2012 £'000	Year Ended 31 March 2011 £'000
Additional Payments by licensees	2	3,061	9,139
Refunds	3	(267)	(5,875)
<b>NET ADDITIONAL PAYMENTS BY LICENSEES</b>		<b>2,794</b>	<b>3,264</b>
Payments under the Wireless Telegraphy Act 1998 (c.6)	4	117,854	110,517
Fees received from Government Departments	5	155,688	73,129
Interest Received		16	19
<b>TOTAL SPECTRUM FEE PAYMENTS RECEIVED</b>		<b>273,558</b>	<b>183,665</b>
Financial penalties	7	3,167	235
<b>TOTAL RECEIPTS FOR THE YEAR</b>		<b>279,519</b>	<b>187,164</b>
Payments to UK Department for Business, Innovation and Skills		(37)	(187,576)
Payments to UK Department for Culture, Media and Sport	4 & 6	(269,203)	-
Payments to the United Kingdom Consolidated Fund		(6,034)	(3,240)
Payments to the Northern Ireland Consolidated Fund		(168)	(317)
Payments to the Treasury of the Isle of Man		(8)	(4)
Payments to the Treasury of the Bailiwick of Jersey		(7)	(3)
Payments to the Treasury of the Bailiwick of Guernsey		(5)	(2)
<b>NET PAYMENTS TO CONSOLIDATED FUNDS AND TREASURIES</b>		<b>(6,222)</b>	<b>(3,566)</b>
<b>TOTAL PAYMENTS FOR THE YEAR</b>		<b>(275,462)</b>	<b>(191,142)</b>
<b>(DEFICIT)/EXCESS OF RECEIPTS OVER PAYMENTS FOR THE YEAR</b>		<b>4,057</b>	<b>(3,978)</b>

**STATEMENT OF CASH BALANCES**  
as at 31 March 2012

	Notes	31 March 2012 £000	31 March 2011 £000
Balance at beginning of the year		331	4,309
Refund to auction bidders from previous year	9	-	-
Excess/(Deficit) of receipts over payments for the year		4,057	(3,978)
<b>Balance at end of year</b>		<b>4,388</b>	<b>331</b>
Spectrum auction deposits	9	-	-
<b>TOTAL CASH BALANCE</b>		<b>4,388</b>	<b>331</b>
<b>CASH BALANCE OWED TO</b>			
UK Department for Culture, Media and Sport		4,355	37
Channel 3 & 5 license holders		28	267
Consolidated Funds and Treasuries		5	27
	8	<b>4,388</b>	<b>331</b>
Refundable to auction bidders		-	-

*The Notes on pages 9 to 11 form part of these accounts.*

**Ed Richards**  
**Chief Executive**  
**Office of Communications**

**19 June 2012**

**NOTES TO THE ACCOUNTS**  
**For the year ended 31 March 2012**

**1. Basis of Accounting**

These accounts are prepared on a receipts and payments basis in accordance with the provisions of Section 400(4) of the Communications Act 2003. They also show the amounts paid to the Treasury of the Isle of Man, the Treasury of the Bailiwick of Jersey, and the Treasury of the Bailiwick of Guernsey under Statutory Instrument 1991, Nos. 998, 1710, and 1709 respectively.

**2. Additional Payments**

Additional payments by television licensees are stated after the deduction of £17.1m (2010/11: £108.2m) from licensees' payments which is as a result of applying the digital terrestrial and multi-channel penetration percentage rates to the qualifying revenue. This included rebates totalling £0.04m (2010/11: £3.2m) relating to the final two quarters of the previous financial year. Data from BARB reports, which are published quarterly, were used to calculate the correct digital penetration rates and rebates totalling £0.1m (2010/11: £1.3m; first two quarters) were made to the television licensees pertaining to the first three quarters of this financial year.

The Digital Economy Act 2010 ("the 2010 Act") includes provisions which amend the 1990 Act to allow the Independent National Radio (INR) licences to be renewed for up to a further seven years rather than be re-awarded under a competitive auction. Each of the INR licensees applied for a renewal of their licence in 2010/11.

When determining the new financial terms, it was recognised that the profits associated with the right to broadcast nationally on analogue have reduced over time as digital listening has increased and, in recent years, as national radio advertising revenue has fallen. In setting the new financial terms, it was necessary to reflect the reducing value to potential new entrants of the right to broadcast radio on analogue spectrum.

The conclusion of the renewal and determination of the financial terms was that the incumbent INR licence holders could retain their licence in a hypothetical auction for a nominal amount. The financial terms for the INRs were set at a nominal cash bid amount of £10,000 per annum, with a nil PQR. No retrospective adjustment was required to any INR PQR amounts.

Therefore, radio licence additional payments are stated with deduction of £0 (2010/11: £2.5m) following the licence review as the PQR terms in 2011/12 are 0%.

**3. Refunds**

Refunds of £0.3m (2010/11 £11.0m) were paid in 2011/12, due to overpayments. The material difference from the previous year is because the 2010/11 balance includes the total amount refunded to Channel 3 & 5 stakeholders from a licence review and subsequent adjustment of the financial terms.

An agreement with BIS permitted the retention of £0.3m by Ofcom from the collection of 2010/11 WT Act Spectrum receipts to refund outstanding Channel 3 & 5 stakeholder balances. This was withheld to fund the retrospective rebate adjustments following the 2010/11 review of the financial terms of Channel 3 and Channel 5 licence holders where funds had been transferred to the Consolidated Funds of Northern Ireland and the Isle of Man. The stakeholders were refunded a total of £0.3m in April 2011 and no further refunds are due in relation to the 2010/11 licence review.

#### **4. Payments under the Wireless Telegraphy Act 1998**

Section 400(2) of the Communications Act requires that, subject to the refunds described in Note 3 and the retention of funds to cover costs as described in Note 6, all amounts from the list in Section 400(1) paid to Ofcom, including payments under the Wireless Telegraphy Act 1998 (c.6), should be passed to the appropriate Consolidated Fund. The exception to this are Wireless Telegraphy Act receipts, which are paid to DCMS (with the outstanding 2010/11 balance paid to BIS), as directed by the Treasury in accordance with its powers under the Government Resources and Accounts Act 2000 and the annual Appropriation Act.

In the period of these accounts, £269.2m (2010/11: £187.6m to BIS) was paid to DCMS in respect of spectrum fees received and interest earned on cash balances held and £0.04m paid to BIS in respect of the remaining 2010/11 balance.

#### **5. Fees Received from Government Departments**

Under Section 163 of the Communications Act, Ofcom receives fees for spectrum use from certain Government departments. These are not Wireless Telegraphy Act payments, but are in all respects treated in the same manner as described in these notes for cash received from commercial licensees. During the period under review, invoices totalling £155.7m were issued and paid (2010/11: £73.1m) by Government departments. The total fees received have been included in these accounts, although this is not specifically required by Section 400 of the Communications Act.

#### **6. Sums Retained from Wireless Telegraphy Act Payments**

Under Section 401 of the Communications Act, Ofcom has the power, subject to Treasury approval, to make a statement of principles under which any or all of the amounts collected under the Wireless Telegraphy Act can be retained to offset the costs of carrying out the spectrum functions detailed in subsection 401(4) of the Act.

To date, no such statement has been made and no sums have been retained for this purpose. Instead, during the year under review, grants totalling £60.3m (2010/11: £53.0m) were received from DCMS, under the legislative powers referred to in Note 4, to cover the costs of spectrum management. The Section 400 accounts only reflect the physical cash transactions between DCMS and Ofcom in the financial year 2011/12. A full disclosure of the Grant-in-aid figures can be found in the Ofcom main accounts.

In total, £60.3m (2010/11: £75.5m) of grants were received to cover the cost of spectrum management expenditure in 2011/12. At the end of 2011/12 there was unused grant of £0.7m (2010/11: £3.6m) to be carried forward into 2012/13.

A statement of the net spectrum fees payable by DCMS to the Consolidated Fund is given below.

	31 March 2012	31 March 2011
	£'000	£'000
<b>Spectrum fees transferred</b>		
Wireless Telegraphy Act cash transferred to DCMS	113,515	-
Wireless Telegraphy Act cash transferred to BIS	37	114,447
Non-WTA spectrum fees transferred	155,688	73,129
<b>Total spectrum fees transferred by Ofcom for surrender to the Consolidated Fund</b>	<b>269,240</b>	<b>187,576</b>
<b>Related Costs</b>		
Grant in Aid paid to Ofcom for Spectrum Clearance and Awards Programme (SCAP) - ringfenced	(52,223)	(16,398)
Spectrum management Grant in Aid paid to Ofcom	(60,347)	(52,980)
<b>Total Spectrum Grant received by Ofcom from DCMS</b>	<b>(112,570)</b>	<b>(69,378)</b>

## 7. Financial Penalties

Penalties imposed and paid in the year were as follows:

	31 March 2012	31 March 2011
	£'000	£'000
<b>Sector</b>		
Broadcasting	128	235
Radio	2	0
Networks & Services	3,037	0
	<b>3,167</b>	<b>235</b>

All details of the penalties can be found on the Ofcom website and can be found at: <http://www.ofcom.org.uk/about/annual-reports-and-plans/financial-penalties/financial-penalties-imposed-for-the-period-2011-12/>

## 8. Balance at End of the Financial Year

The cash balance of £4.4m (2010/11: £0.3m) at the end of the year was deposited in a bank account controlled by Ofcom. This consists of Wireless Telegraphy Act fees received into the bank account on the last 6 days of the year and payable to DCMS for onward transmission to the Consolidated Fund.

The remaining balance from additional payments was due to timing of the payment to the Northern Ireland consolidated fund, as discussed with the Department of Finance and Personnel – Northern Ireland (DFPNI), a remaining balance owed to HM Treasury and a rebate owed to a stakeholder in respect of an overpayment.

All remaining balances are to be transferred to the relevant parties in April 2012.

## 9. Spectrum Auctions

No spectrum auctions took place in 2011/12.