



# Computation of Qualifying Revenue and Multiplex Revenue for Radio Licensees

Statement of Principles  
and Administrative Arrangements  
under the Broadcasting Act 1990,  
the Broadcasting Act 1996  
and the Communications Act 2003

**Statement**

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## Section 1

# Foreword

- 1.1 Ofcom is required under the Broadcasting Act 1990 ('1990 Act') and Broadcasting Act 1996 ('1996 Act') to draw up, and from time to time review, a statement setting out the principles to be followed in determining the additional payment due in respect of Qualifying Revenue, which is paid annually by Independent National Radio (INR) and Additional Service (AS) licensees. There is a similar requirement under the 1996 Act to draw up a statement of principles for the additional payment due in respect of Multiplex Revenue which relates to the National Radio Multiplex (NRM) licence.
- 1.2 In November 1998 Ofcom's predecessor, the Radio Authority, published the Computation of Qualifying Revenue Statement of Principles: Broadcasting Acts 1990 and 1996 (Revision 2 – November 1998), which sets out the current process for calculating and charging Qualifying Revenue additional payments.
- 1.3 This statement is published by Ofcom in order to confirm its interpretation of Qualifying Revenue and Multiplex Revenue, the methodology for calculating Qualifying and Multiplex Revenue additional payments and to set out more clearly the administrative arrangements. Additionally it makes necessary consequential amendments to the previous statement as a result of the Communications Act 2003.
- 1.4 The Department for Culture, Media and Sport and the Treasury have been consulted by Ofcom on this statement. The statement may be revised from time to time, after consultation with the Department for Culture, Media and Sport and the Treasury.
- 1.5 The contents of this statement are provided as guidance only. For the avoidance of doubt the relevant sections of the 1990 Act, 1996 Act and Communications Act will take precedence. The statutory provisions contained in the Acts are, in some cases, drawn in broad terms. References to the principal definitions used in the Acts can be found at Annex 1.

## Outline of the statement

- 1.6 Section 2 provides the background to this statement, including an outline of the relevant statutory requirements.
- 1.7 Section 3 sets out the definitions of Qualifying Revenue and Multiplex Revenue and Ofcom's principles for assessing additional payments.
- 1.8 Section 4 explains the administrative arrangements that are in place for making the additional payments and the setting of financial penalties.

## Section 2

# Background

### Statutory requirements

- 2.1 The statutory provisions for the assessment and collection of the additional payments are contained within the 1990 Act (Sections 102 and 118) and 1996 Act (Section 55).
- 2.2 The 1990 Act requires Independent National Radio (“INR”) and national Additional Radio Services licensees to make two kinds of “additional payments”:
  - a “Cash Bid”; and
  - a “Percentage of Qualifying Revenue” (“PQR”).
- 2.3 The 1996 Act requires the National Radio Multiplex (“NRM”) licensee to make one kind of “additional payment”:
  - a “Percentage of Multiplex Revenue” (“PMR”).
- 2.4 This statement is only concerned with the PQR and PMR. Additional payments in respect of the PQR and PMR are only due if a percentage has been set as payable.
- 2.5 Such a statement, and any revision thereof, has to be drawn up after consultation with the Secretary of State for Culture, Media and Sport and the Treasury, and it must then be published. Copies of the statement and any revision thereof must be laid by the Secretary of State for Culture, Media and Sport before each House of Parliament. Ofcom may draw up different principles for persons holding different types of licences.

### Additional payments in respect of PQR and PMR

- 2.6 The payments are described as additional because they are additional to the amounts paid by licensees to Ofcom to meet the cost of its functions. Licensees are persons to whom Ofcom, or the Radio Authority as its predecessor, has issued a licence under the terms of the Act. These additional payments, when received by Ofcom, do not form part of its revenue but are paid into the Consolidated Fund of the United Kingdom or the Consolidated Fund of Northern Ireland or to the Treasury of the Isle of Man, as appropriate.
- 2.7 Section 2 of this statement is concerned with Ofcom’s practice in the interpretation of what is the Qualifying and Multiplex Revenue of a licensee.

### Current Percentages of Qualifying Revenue and Multiplex Revenue

- 2.8 The PQR and PMR that is currently payable by the holder of each national licence is as set out below:
  - AN001-2 (formerly INR1) - the licence in respect of broadcasting on the FM waveband a service which complies with the requirements set out in Section 85(2)(a)(ii) of the 1990 Act - the PQR is currently set at 14%;

- AN002-1 (formerly INR2) - the licence in respect of broadcasting on the AM waveband a service which is unrestricted as to format (provided that the format is different from INR1's) - the PQR is currently set at 12%;
- AN003-1 (formerly INR3) - the licence in respect of broadcasting on the AM waveband a service which complies with the requirements set out in Section 85(2)(a)(i) of the 1990 Act - the PQR is currently set at 6%;
- Additional Service Licence A/S1-2 (formerly AS1) - the licence in respect of transmitting on the spare capacity of the RDS Subcarrier of the AN001-2 service broadcasting on the FM waveband as defined within the specification document published by the Radio Authority in March 1994 - the PQR has been set at 4%; and
- NRM – by virtue of The Broadcasting (Percentage of National Radio Multiplex Revenue) Order 1998 (the “Order”) made pursuant to section 55(2) of the 1996 Act, no percentage is specified under section 46(1) of the 1996 Act - the PMR therefore is 0% for the current term of the NRM licence.

2.9 The PQR payable may be amended by Ofcom on extension or renewal of the AN001-2, AN002-1, and AN003-1 licences. On extension or renewal of the NRM licence, a different PMR may be specified by Ofcom with the consent of the Secretary of State.

2.10 The statement of principles does not purport to be a legal definition of the statutory provisions but is intended to explain the way in which Ofcom interprets its statutory duties in the assessment and collection of the PQR and PMR payments from the licensees.

## Section 3

# Principles for assessing Qualifying Revenue and Multiplex Revenue

- 3.1 Ofcom applies specified principles in assessing a licensee's Qualifying and Multiplex Revenue. These include treatment of both the various payments received by a licensee, and of revenues derived from transactions with certain third parties ('connected persons'). These principles are set out in this section.
- 3.2 Qualifying or Multiplex Revenue is the pool of revenues to which a PQR or PMR rate, respectively, is applied for the purposes of collecting additional payments.

## Definition of 'Qualifying Revenue'

### INR licences

- 3.3 Section 102(2) of the 1990 Act defines Qualifying Revenue as "all payments received or to be received by [the licence holder] or by any connected person in consideration of the inclusion in the licensed service of advertisements or other programmes, or in respect of charges made in that period for the reception of programmes included in that service".

### Additional Services licence

- 3.4 Qualifying revenue for any accounting period of the licence holder shall consist of all amounts which are received or to be received by him or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, in that period the spare capacity allocated by the licence.

## Definition of 'Multiplex Revenue'

- 3.5 The 1996 Act sets out definitions for Multiplex Revenue which concern both Multiplex Licensees and third parties providing services carried on the multiplex (digital sound programme and digital additional service providers). The following summarises the definitions in the 1996 Act.
- 3.6 For NRM licence holders, Multiplex Revenue includes all payments or other financial benefit received, or to be received by the licensee or any person connected to him, in consideration of the inclusion in the services carried on the multiplex of advertisements or other programmes, or from charges for the reception of programmes included in those services. It also includes all payments received by the NRM licensee, or any connected person, in respect of the broadcasting of any simulcast radio service by means of the NRM licence or payments made to enable the NRM licence holder to meet its additional payments.
- 3.7 If a programme provider or additional service provider derives any financial benefit (whether direct or indirect) from payments made by any person, other than the NRM licence holder, in consideration of the inclusion in the provider's service of advertisements or other programmes (e.g. by way of sponsorship for the purpose of defraying or contributing towards the cost of programmes,) the amount of financial benefit constitutes Multiplex Revenue.

- 3.8 All payments referred to in paragraphs 3.6 and 3.7 above will comprise Multiplex Revenue as follows:
- a) In respect of payments referred to in paragraph 3.6, if such payments are received by the NRM licensee, or any person connected with him, from a person other than a programme or additional services provider;
  - b) In respect of payments referred to in paragraph 3.7 in relation to programme providers, if such payments are received by any digital sound programme provider, or any person connected with him, from a person other than the NRM licence holder, an additional services provider or another programme provider;
  - c) In respect of payments referred to in paragraph 3.7 in relation to additional service providers, if such payments are received by any digital additional services provider, or any person connected with him, from a person other than the NRM licence holder, a programme provider or another additional service provider.

### **Payments considered in assessing Qualifying or Multiplex Revenue**

- 3.9 As set out above, Qualifying or Multiplex Revenue is defined by reference to amounts received in connection with the licensed service. The bases for ascertaining these amounts are set out in this section.

### **Advertising revenue**

- 3.10 Advertising revenue included within the computation of Qualifying or Multiplex Revenue represents the net advertising revenue (ie net of commission paid to advertising agents) received or receivable by the licence holder in respect of consideration for the inclusion of advertisements in the licensed service as recorded in the profit and loss account for the accounting period computed on a normal accruals basis. For the purpose of calculating advertising revenue, all revenue which results from the normal trading terms and conditions for the insertion of advertisements into and around the programmes will be taken into account. For example, late payment surcharges and cancellation penalties will be included as Qualifying or Multiplex Revenue, and early payment or volume discounts will be deducted from Qualifying or Multiplex Revenue.
- 3.11 Specific provisions for bad debts that are made in relation to advertising revenue in the audited accounts of licensees may be deducted. However, internally generated costs related to the selling of airtime are not allowable as a deduction from Qualifying or Multiplex Revenue.
- 3.12 Any amount received or receivable by the licensee in respect of an advertisement or other programme to meet his liability for additional payments (excluding the cash bid) will be regarded as advertising revenue.
- 3.13 Where the amount paid over by the advertiser includes a payment in respect of any costs incurred by the licensee in producing the advertisements included in the programme service, then this amount shall be included when computing the Qualifying or Multiplex Revenue of the licensee.
- 3.14 Apart from commission paid to advertising agents, advertising revenue may not be reduced under arrangements where all or part of the consideration for the

advertisement is receivable by any person other than the licensee or his connected person. Commission paid to an advertising agent in excess of 15 per cent of the amount payable by the advertiser will be disregarded when computing advertising revenue.

### **Sponsorship Income**

- 3.15 A programme is sponsored if any payment is made, or if any part of its costs of production or transmission is met, by an organisation or person other than a licensee, with a view to promoting that organisation or person's own or another's name, trademark, image, activities, products, or other direct or indirect commercial interests.
- 3.16 Sponsorship income of a licensee will be calculated on the same basis as advertising revenue in paragraph 3.10 above, so far as applicable. That is, normal trading terms and conditions will be taken into account in determining sponsorship income.
- 3.17 Any amount received or receivable by the licensee, in respect of the inclusion of a programme in the licensed service, to meet his liability for additional payments (excluding the cash bid) will be regarded as sponsorship income.

### **Advertising or sponsorship income which includes other rights**

- 3.18 Where the price paid for the right to include an advertisement or other programme, or sponsorship on the licensed service also covers other rights, Ofcom reserves the right to apportion the price paid between that part which, in the opinion of Ofcom, relates to Qualifying or Multiplex Revenue of the licensed service, and that part which relates to other rights.

### **Payments excluded from Qualifying or Multiplex Revenue**

- 3.19 As stated above (see sections headed 'Definition of Qualifying Revenue' and 'Definition of Multiplex Revenue'), the intention of the Act is that additional payments should be made in respect of revenues or equivalent derived only from the broadcasting activities of the licensee. It follows, therefore, that revenues derived exclusively from the licensee's non-broadcast related activities will not be included in the computation. The test that Ofcom will apply, in establishing whether particular revenue streams should be excluded for the purposes of determining additional payments, will be whether the activities or arrangements from which the revenues are derived, are in consideration of the inclusion or reception of a programme (including an advertisement) in a service.
- 3.20 Thus, for example, income generated from ticket sales in respect of concert promotions or from telephone information services or similar activities, whether or not these are linked to the content of a service or the licensees' on-air promotional activities, would be excluded from the licensee's computation of Qualifying or Multiplex Revenue.
- 3.21 Any income or benefit that accrues to the licensee in respect of any sale or assignment of programme rights will not constitute Qualifying or Multiplex Revenue and therefore can be excluded in the assessment of additional payments.



- 3.22 Investment income from interest and dividends, together with the proceeds of asset sales, would be excluded from the computation of the licensee's Qualifying or Multiplex Revenue.
- 3.23 Income derived from merchandising activities (the sale of promotional goods or services with the intention of making a profit), together with income derived from the hiring out of facilities to third parties, would be excluded from the computation of the licensee's Qualifying or Multiplex Revenue.

### **Payments considered in assessing Qualifying Revenue in relation to the Additional Services licence**

- 3.24 Qualifying revenue in relation to the accounting period of the Additional Services licensee, is the aggregate of all revenue derived directly or indirectly by the licensee from its holding of the licence and shall include (but not be limited to) revenue from subscriptions, sponsorship, co-funding and advertising and shall also include the amount of any payment made to any connected person of the licensee to meet any additional payments payable.
- 3.25 Where the licensee authorises another person to use the spare capacity, and that person is not a connected person, payments made to the licensee or his connected person by that person for the right to use all or part of the licensed spare capacity will be Qualifying Revenue of the licensee. However, the sub-licensee's or sub-contractor's own revenues, arising from the use of the capacity, will not form part of the licensee's Qualifying Revenue.
- 3.26 If a licensee, or his sub-licensee or sub-contractor, provides other goods, services or facilities in conjunction or association with the use of the licensed spare capacity, income from these other activities will not be Qualifying Revenue of the licensee. The licensee or any connected person must establish and maintain separate accounts sufficient to enable Qualifying Revenue to be identified and assessed.

### **General Principles followed by Ofcom in assessing Qualifying or Multiplex Revenue**

#### **Transactions Involving Persons Connected with a Licensee**

- 3.27 As mentioned above, revenues from some third parties (ie: connected persons) will also be considered by Ofcom when assessing Qualifying or Multiplex Revenue. For the purposes of computing Qualifying or Multiplex Revenue the licensee, its parent company, its subsidiaries and any associates (which includes directors within the same corporate group and, in respect of individuals, husbands, wives and relatives, trustees, partners, and persons acting together) are connected with each other. A more detailed description of what qualifies as a connected person is set out in the 1990 and 1996 Acts.
- 3.28 Any Qualifying or Multiplex Revenue of a licensee's connected persons will be taken into account in the calculation of the licensee's Qualifying or Multiplex Revenue. There is no provision for the apportionment of such Qualifying or Multiplex Revenue on the basis of the licensee's interest in the connected person or the connected person's interests in the licensee. Where a company is a connected person of two or more licensees, Ofcom will (in order to avoid double counting), apportion between the licensees the Qualifying or Multiplex Revenue arising from those activities of the connected person. This will be done on the basis of how, in Ofcom's opinion, those

activities reflect or discharge the rights of the licensees under their respective licences.

- 3.29 Where the connected person is himself a licensee liable to a payment of a percentage of Qualifying or Multiplex Revenue, it is necessary to avoid a payment being made twice on the same Qualifying or Multiplex Revenue. That is, once in the hands of the licensee and again in the hands of its connected person. In such circumstances the licensee who will be liable for the charge will be the one from whose licensed service the Qualifying or Multiplex Revenue first arises.
- 3.30 Transactions of a licensee's connected person who is not incorporated in the United Kingdom and who has the whole, or substantially the whole, of his business outside the United Kingdom, are treated as outside the scope of Qualifying or Multiplex Revenue provided that Ofcom is satisfied that the connected person is not engaging to any significant degree in activities which are associated with, or incidental to, or arise out of the licensee's rights under his licence.

### Accounting period

- 3.31 "Accounting Period" shall be taken to mean the period for which the licensee makes up its financial statements which are laid before the licensee's shareholders annual general meeting, whether that period is a year or not. Where the licence is not in force throughout the whole of a licensee's accounting period, the period during which the licence is in force, is treated as a separate accounting period.

### General

- 3.32 These principles include conditions imposed by Ofcom to prevent avoidance of the declaration of Qualifying or Multiplex Revenue, and to ensure, as far as possible, equitable treatment between licensees. Where a licensee receives financial benefit (directly or indirectly) that falls within the definition of Qualifying or Multiplex Revenue, this is counted as Qualifying or Multiplex Revenue even if the activity concerned is in breach of Ofcom or other regulations.
- 3.33 When a licensee receives payment, or other restitution, for example, under an insurance or legal claim, this will be treated as Qualifying or Multiplex Revenue to the extent that it is in respect of activities that would have generated Qualifying or Multiplex Revenue.

### Apportionment of income

- 3.34 Where income is received in consideration of the inclusion of a programme (including an advertisement) which is broadcast simultaneously with another programme service which falls outside the scope of this Statement of Principles (non-relevant service), then the computation of Qualifying or Multiplex Revenue shall include the appropriate proportion of this income, which shall be apportioned on the same basis as the total number of listened hours to each service during the accounting period. i.e.

- $QR = A/(A+B)$

- 3.35 Where:

- QR = Proportion of total income received or receivable in respect of programmes broadcast simultaneously on a service falling within the scope of these principles and a non relevant service;
  - A = Total hours listened to the programme service which is liable to make additional payments under the terms of Section 102 of the 1990 Act; and
  - B = Total hours listened to the non relevant programme service.
- 3.36 Total hours shall be established by reference to RAJAR data or other audience measure as determined by Ofcom.
- 3.37 As an example, in respect of the INR licences, Ofcom's interpretation of the relevant statute is that the definition of Qualifying Revenue must include revenue derived from the national analogue but not from local analogue or digital services which may in part or in whole represent a simulcast of the national analogue service. This is because Qualifying Revenue is defined with reference to the 'licensed service'. Any local simulcast analogue services are covered by a separate licence. Section 41 and 56 of the Broadcasting Act 1996 ("1996 Act") indicate that there is a difference between the 'licensed service' and the digital simulcasts.

## Section 4

# Administrative Arrangements

- 4.1 The assessment of Qualifying or Multiplex Revenue will normally be based upon the statutory accounts, as audited and laid before the company's shareholders in general meeting. Such accounts, if accompanied by an unqualified report by the company's auditors, provide prima facie evidence that income is correctly recorded.
- 4.2 Ofcom has, however, the discretion to form its own opinions as to any item or amount included or excluded from:
- the audited profit and loss account for the purpose of determining Qualifying or Multiplex Revenue; and
  - audit certificates of Qualifying or Multiplex Revenue and computations of Qualifying or Multiplex Revenue for an accounting period.
- 4.3 Where a company's audited accounts relate to a business of which the licensed activity is only a part, the licensee must establish and maintain separate accounts for the licensed activity sufficient to enable Qualifying or Multiplex Revenue to be separately identified and assessed.
- 4.4 In the circumstances outlined in paragraph 4.3, and when the licence is not in force throughout an accounting period, Ofcom may require the licensee to procure, and secure that each of its connected persons (other than any which Ofcom agrees may be excluded from this requirement) procures a certificate from its auditors confirming the level of Qualifying or Multiplex Revenue and stating that it has been calculated in accordance with the Statement of Principles.
- 4.5 It is implicit that audited accounts and certificates of Qualifying or Multiplex Revenue are drawn up in accordance with generally accepted accounting practices appropriate to the industry and which conform to the accounting standards and the guidelines promulgated by the professional accountancy bodies. It is equally implied that accounting policies are applied consistently throughout these accounts. Any changes in policy or practice which might have a material effect on a licensee's Qualifying or Multiplex Revenue should be discussed with Ofcom before implementation. Where necessary Ofcom will consult the Department for Culture, Media and Sport and the Treasury.
- 4.6 The following arrangements are designed to ensure that statutory requirements are met. They expand upon conditions incorporated in Ofcom licences where appropriate.

## Arrangements for Additional Payments

- 4.7 Whether incorporated in the United Kingdom or not the licensee, and any connected person, is required to keep true and fair accounts of relevant income and other transactions, together with such information as is necessary to enable accurate computations to be made of his liability for additional payments.
- 4.8 The 1990 Act provides that, in relation to that part of additional payments which consist of a specified percentage, or percentages, of Qualifying or Multiplex

Revenue, Ofcom may require payments to be made by monthly instalments. Where this is the case, a licensee's additional payments calculated as a percentage of Qualifying or Multiplex Revenue for a particular month will be based on the preceding month's actual statement of Qualifying or Multiplex Revenue.

- 4.9 Not later than 21 days after the end of each month the licensee must provide to Ofcom a statement in the form prescribed by Ofcom of his actual Qualifying or Multiplex Revenue for the month.
- 4.10 The instalments of additional payments for each month will be payable on the 28th of the following month. Payment should be made by electronic transfer to the Paymaster General's Account on the due date.
- 4.11 Licensees will supply forecasts of Qualifying or Multiplex Revenue twice a year as directed by Ofcom.
- 4.12 Not later than the earlier of:
- (a) three weeks after the signing of the report of the licensee's auditors on either the licensee's audited accounts or, if appropriate, on the audited accounts of any connected person of the licensee; or
  - (b) one week after the accounts of the licensee or, if appropriate, the licensee's connected person, have been sent to members of the company,
- the licensee must send to Ofcom a true copy of those accounts and report, together with a certificate audited by the licensee's external auditors confirming the level of Qualifying or Multiplex Revenue and stating that it has been calculated in accordance with this Statement of Principles.
- 4.13 With the accounts and certificate the licensee must send to Ofcom a draft Qualifying or Multiplex Revenue computation for the accounting period in the form prescribed by Ofcom that determines a licensee's actual liability to additional payments on the basis of the prescribed percentage of Qualifying or Multiplex Revenue.
- 4.14 As soon as it can after the receipt of the audited accounts, and after its own examination and inspection of the accounts, audit certificates, draft computation and records of the licensee, Ofcom will send to the licensee a final computation showing its assessment of Qualifying or Multiplex Revenue and the additional payments to be made in respect of the accounting period, the instalments paid on account and the amount of any balance due or refundable.
- 4.15 The licensee may dispute any amounts in the final computation within 14 days. Ofcom will consider any objections to the computation, accept them or reject them in whole or in part, and where necessary send a revised computation to the licensee. When finally determined, any balance due from the licensee must be paid within 14 days of receipt of the final statement. In the event of any disagreement between the licensee and Ofcom the amount to be paid will be the sum determined by Ofcom.

- 4.16 When, for an accounting period, the instalment(s) paid exceed the amount due, or when, for an accounting period, the total instalments paid exceed the liability shown in the licensee's draft computation or Ofcom's final computation, the excess will, at Ofcom's discretion, be:
- set off against amount(s) payable for the remainder of, or in other accounting period(s); and/or
  - refunded directly to the licensee.

### **Qualifying Revenue based Financial Penalties**

#### *INR licences*

- 4.17 Financial penalties may be imposed by Ofcom, where a licensee fails to comply with a condition of the licence or any direction issued by Ofcom. The amount of any financial penalty will be determined by Ofcom and will be up to 5 per cent of qualifying revenue. The maximum penalty will be whichever is the greater of £250,000 and 5 per cent of qualifying revenue.
- 4.18 On revocation of the licence the penalty will not exceed whichever is the greater of £250,000 and 7 per cent of qualifying revenue. Qualifying revenue will be the amount assessed by Ofcom for the last complete accounting period.
- 4.19 Unless the first accounting period is not completed or the licence has not come into force, qualifying revenue for the purposes of computing a licensee's liability to a financial penalty will be determined on the basis of the qualifying revenue reported in the certificate audited by the licensee's external auditors and, if appropriate, Ofcom's own inspection of the licensee's accounts and records for that period.
- 4.20 Where the first accounting period is not completed or the licence has not come into force Ofcom will make its own estimate of what the qualifying revenue would have been for that period. The amount of any financial penalty shall be determined by Ofcom on the basis of its estimate of qualifying revenue.

#### **Additional Services licence**

- 4.21 The amount of any financial penalty will be determined by Ofcom and will be up to 5 per cent of Qualifying Revenue.

### **Multiplex Revenue based Financial Penalties**

- 4.22 In respect of the NMR, digital sound programme service licensees and digital additional service licensees, financial penalties may be imposed by Ofcom, where a licensee fails to comply with a condition of the licence or any direction issued by Ofcom. The amount of any financial penalty will be determined by Ofcom and will be up to 5 per cent of Multiplex Revenue. The maximum penalty will be whichever is the greater of £250,000 and 5 per cent of the aggregate amount of the shares of Multiplex Revenue attributable to the licensee in respect of whom a fine is imposed.
- 4.23 On revocation of the licence, in relation to the NRM licence only, the penalty will not exceed whichever is the greater of £250,000 and 7 per cent of Multiplex Revenue. Multiplex revenue will be the amount assessed by Ofcom for the last complete accounting period.

- 4.24 Unless the first accounting period is not completed or the licence has not come into force, Multiplex Revenue for the purposes of computing a licensee's liability to a financial penalty will be determined on the basis of the Multiplex Revenue reported in the certificate audited by the licensee's external auditors and, if appropriate, Ofcom's own inspection of the licensee's accounts and records for that period.
- 4.25 Where the first accounting period is not completed or the licence has not come into force Ofcom will make its own estimate of what the Multiplex Revenue would have been for that period. The amount of any financial penalty shall be determined by Ofcom on the basis of its estimate of Multiplex Revenue.

## General

### Information and Records

- 4.26 To enable Ofcom to discharge its duties under the relevant Act each licensee, and, if any, his connected persons must, in accordance with the conditions of the licence, furnish to Ofcom any information or statements (audited if required to be so) which Ofcom may ask for.
- 4.27 Where a connected person of a licensee ceases to be so connected, the licensee must ensure that the connected person will nevertheless furnish to Ofcom information which relates to the period up to the date upon which it ceased to be a connected person and continue to permit inspection of its accounts and records in respect of its transactions up to that date. Similar provisions apply to sales houses, sponsorship agencies, subscriber management businesses and other organisations responsible for the selling, invoicing and collection of Qualifying or Multiplex Revenue.
- 4.28 Where a licence is no longer in force, the former licensee must ensure that Ofcom continues to have access to its accounts and records, or those of any connected person, in respect of transactions in the period up to the date on which the licence ceased to be in force for so long as such accounts and records are to be held in line with the relevant legislation.

### Receipts of Ofcom

- 4.29 Additional payments and financial penalties, which are received by Ofcom, do not form part of the revenue of Ofcom but are paid into the relevant Consolidated Fund (as detailed in section 400 of the Communications Act) as appropriate. The recipient is determined by Ofcom according to the area to which a service is provided under the terms of the licence. Where more than one area is provided with a service under the same licence Ofcom will arrange payments to the relevant Funds and Treasuries in such proportions as it considers appropriate.
- 4.30 The licensees pay all sums due in respect of additional payments and financial penalties into a non-interest-bearing Paymaster General's account held in Ofcom's name. The amounts are retained in this account for a short period before being transferred to the appropriate Consolidated Fund (as detailed in section 400 of the Communications Act).

- 4.31 Ofcom will prepare an account in respect of each financial year ended 31 March showing the additional payments and financial penalties received from licensees, and the sums paid to the Consolidated Funds of the United Kingdom and Northern Ireland and the Treasury of the Isle of Man. The account is sent to the Comptroller and Auditor General who examines, certifies and reports on it and lays copies of it, together with his report, before each House of Parliament.

### **Interest on Late Payments**

- 4.32 Interest is payable on any late payments (either instalments or final balances) at the rate of three per cent over the base rate, for the time being of Lloyds TSB Bank plc (or if unavailable then the rate published by another clearing bank as selected by Ofcom), from the date such payment was due until the date of actual payment. Any interest received by Ofcom in respect of additional payments and financial penalties will be paid into the relevant Consolidated Fund (as detailed in section 400 of the Communications Act).

### **Amounts Determined by Ofcom**

*1990 Act Schedule 7 Part 1, paragraph 2*

- 4.33 The amount of Qualifying or Multiplex Revenue in relation to any person, or any payment made to Ofcom in respect of Qualifying or Multiplex Revenue, shall in the event of a disagreement between Ofcom and that person, be the amount determined by Ofcom.

### **Examination of accounts and records**

- 4.34 Ofcom may from time to time and upon giving reasonable notice, carry out its own examinations of accounts, records etc., including at intervals which may not coincide either with the publication of a licensee's audited accounts or with the provision of audited certificates of Qualifying or Multiplex Revenue.



## Annex 1

# List of references to Acts

The following lists the relevant sections from the 1990 and 1996 Acts and Communications Act with reference to the definitions summarised in this statement.

### **Accounting Period:**

*1990 Act sections 102(9)*

### **Additional payments**

*1990 Act section 102(7)*

*1990 Act Schedule 7, Part 2, paragraph 1*

*Communications Act section 253*

### **Additional Services**

*1990 Act section 118*

### **Advertising revenue:**

*1990 Act sections 102(2), 102(3), 102(4) and 102(5)*

*1990 Act Schedule 2, Part 1, paragraph 1(1)*

### **Connected persons:**

*1990 Act Schedule 2, Part 1 paragraph 1 as amended by 1996 Act Schedule 2 Part 1, paragraph 1*

*1990 Act section 202(1)*

### **Financial penalties**

*1990 Act sections 101, 110 and 120*

*1996 Act section 53, 59, 62 and 66*

*Communications Act, Schedule 13, Part 1, paragraphs 6, 7 and 8*

*Communications Act, Schedule 13, Part 2, paragraphs 17, 19, 20 and 21*

**Multiplex revenue:**

*1996 Act Part 2 of Schedule I*

*1996 Act section 55 and 56*

*The Broadcasting (Percentage of National Radio Multiplex Revenue) Order 1998*

**Qualifying revenue:**

*1990 Act section 102(2), 120(3), 102(6) and 118*

**Sponsorship income:**

*1990 Act section 102(3) and 102(6)*