



# Section 400 Licence Fees and Penalties Account

Year ended 31 March 2010

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## SECTION 400 ACCOUNTS: REVIEW OF 2009/10

### 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 the UK Exchequer 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).

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 £192.7m (2008/09: £226.3m) to the public purse, as outlined below.

### Wireless Telegraphy Act licence fees

On 31 March 2010 there were 52,557 (2008/09: 48,529) Wireless Telegraphy Act (WT Act) licences under issue, divided into a number of categories. WT Act licenses are held by a wide variety of users, from taxi companies to mobile phone operators and television and radio broadcasters.

In 2009/10 Ofcom passed £165.9m (2008/09: £182.9m) collected from WT Act licensees and the interest earned on cash balances held to BIS.

### 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 2009/10 accounts are the television programmes services for Channel 3, Channel 5, Public Teletext, 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 (qualifying revenue).

In 2009/10 Ofcom received £26.5m (2008/09: £35.4m) in additional payments from broadcasters. The cash bid element totalled £5.7m (2008/09: £6.0m) and payments generated from the percentage of qualifying revenue were £20.8m (2008/09: £29.4m).

The overall reduction reflects both the trend of increasing penetration of digital technologies in UK homes and changes in the amounts of advertising and sponsorship revenue generated by the licences.

## **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 2009/10 Ofcom collected fines totalling £0.4m (2008/09: £8.0m). In 2008/09, serious material breaches occurred of the ITC Programme Code 2002 by the public sector broadcasters in respect of the use of Premium Rate Telephone Services in Participation TV. No such material breaches of this nature occurred in 2009/10.

A list of penalties imposed during 2009/10 is published on Ofcom's website and can be found at:  
<http://www.ofcom.org.uk/about/accoun/penalties0910/>

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 the UK Exchequer and, where appropriate, to the Treasuries of Northern Ireland, 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**

**Date: 16 June 2010**

## **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 Office of Communications Section 400 Licence Fees and Penalties for the year ended 31 March 2010 under Section 400(6) of the Communications Act 2003. These 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, 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 the financial statements in accordance with applicable law and 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 have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Office of Communications Section 400 Licence Fees and Penalties account 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 reported in the financial statements have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

### Opinion on Regularity

In my opinion, in all material respects the receipts and payments have been applied to the purposes intended by Parliament and the financial transactions 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 Section 400 Accounts: Review of 2009/10 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; or

**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: 23 June 2010**

**RECEIPTS AND PAYMENTS ACCOUNTS**  
for the year ended 31 March 2010

	Notes	Year Ended 31 March 2010 £'000	Year Ended 31 March 2009 £'000
Additional Payments by licensees	2	26,483	35,453
Refunds	3	(1)	(18)
<b>NET ADDITIONAL PAYMENTS BY LICENSEES</b>		<b>26,482</b>	<b>35,435</b>
Payments under the Wireless Telegraphy Act 1998 (c.6)	4	118,608	128,695
Fees received from Government Departments	5	50,351	50,351
Interest Received		14	479
<b>TOTAL SPECTRUM FEE PAYMENTS RECEIVED</b>		<b>168,973</b>	<b>179,525</b>
Financial penalties	7	395	8,031
<b>TOTAL RECEIPTS FOR THE YEAR</b>		<b>195,850</b>	<b>222,991</b>
Payments to UK Department for Business, Innovation and Skills	4 & 6	<b>(165,942)</b>	<b>(182,873)</b>
Payments to the United Kingdom Consolidated Fund		(26,265)	(42,327)
Payments to the Northern Ireland Consolidated Fund		(501)	(1,088)
Payments to the Treasury of the Isle of Man		(7)	(18)
Payments to the Treasury of the Bailiwick of Jersey		(5)	(20)
Payments to the Treasury of the Bailiwick of Guernsey		(3)	(13)
<b>NET PAYMENTS TO CONSOLIDATED FUNDS AND TREASURIES</b>		<b>(26,782)</b>	<b>(43,466)</b>
<b>TOTAL PAYMENTS FOR THE YEAR</b>		<b>(192,724)</b>	<b>(226,339)</b>
<b>(DEFICIT)/EXCESS OF RECEIPTS OVER PAYMENTS FOR THE YEAR</b>		<b>3,126</b>	<b>(3,348)</b>



**STATEMENT OF CASH BALANCES**  
as at 31 March 2010

	Notes	31 March 2010 £000	31 March 2009 £000
Balance at beginning of the year		1,183	4,531
Refund to auction bidders from previous year	9	-	-
Excess/(Deficit) of receipts over payments for the year		3,126	(3,348)
<b>Balance at end of year</b>		<b>4,309</b>	<b>1,183</b>
Spectrum auction deposits	9	-	-
<b>TOTAL CASH BALANCE</b>		<b>4,309</b>	<b>1,183</b>
<b>CASH BALANCE OWED TO</b>			
UK Department for Business, Innovation and Skills		4,214	1,182
Consolidated Funds and Treasuries		95	1
	8	<b>4,309</b>	<b>1,183</b>
Refundable to auction bidders		-	-
		<b>4,309</b>	<b>1,183</b>

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

**Ed Richards**  
Chief Executive  
Office of Communications

Date: 16 June 2010

**NOTES TO THE ACCOUNTS**  
**For the year ended 31 March 2010**

**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.

There were no receipts or payments to disclose in these accounts in accordance with the provision of Section 38(5) of the Broadcasting Act 1996 because the Secretary of State has, by Order, set the percentage of multiplex revenue on multiplex licences at zero for the first twelve years.

**2. Additional Payments**

Additional payments by television licensees are stated after the deduction of £162.1m (2008/09: £159.8m) 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 £0.3m (2008/09: £0.5m) relating to the first quarter 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 £1.5m (2008/09: £1.4m; first three quarters) were made to the television licensees pertaining to the first two quarters of this financial year.

For radio licensees, additional payments stated are calculated after the deduction of £4.2m (2008/09: £8.6m) which is as a result of applying the digital penetration percentage rates to the qualifying revenue. The material decrease is due to a change in the terms of the national licenses held by TalkSport and Absolute Radio. Following the decision to use RAJAR data to calculate a digital rebate for the national radio licensees, rebates totalling £3,341 (2008/09: £67,778) were made during the year to one independent national radio licence holder.

In July 2009, the Department for Culture, Media and Sport (DCMS) issued Commencement Order No. 4 under the Communications Act 2003. A link to this Order is here:

[http://www.opsi.gov.uk/si/si2009/uksi\\_20092130\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20092130_en_1)

The Order brought into force section 272 and 273 of the Communications Act 2003. One effect of this was that it provided for a review of the financial terms associated with the holders of the Channel 3 and Channel 5 PSB licences, as provided for under section 226 of the Act. 8 of the regional Channel 3 licences and the holder of the Channel 5 licence made an application for a review under section 226 and this will determine the financial terms payable from 2010 to 2014. The review of financial terms will take place during 2010, but any revised terms will be applied retrospectively from 1 January 2010.

The Teletext licence was revoked on 29 January 2010. The notice of the revocation can be found at: [http://www.ofcom.org.uk/tv/ifi/tvlicensing/pt/revocation\\_notice.pdf](http://www.ofcom.org.uk/tv/ifi/tvlicensing/pt/revocation_notice.pdf)

**3. Refunds**

£774 (2008/09 £18,438) was refunded in 2009/10 due to an overpayment.

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

Section 400(2) of the Communications Act requires that, subject to the refunds described in Note 2 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. Currently, however, Wireless Telegraphy Act receipts are being 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, £165.9m (2008/09: £182.9m) was paid to BIS in respect of spectrum fees received and interest earned on cash balances held.

#### **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 £59.3m were issued but fees of only £50.4m (2008/09: £50.4m) were received from 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. The shortfall in payment was primarily due to the timing of a final invoice totalling £8.9m, which was not paid in 2009/10 and so is not included in these accounts.

#### **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 £67.6m (2008/09: £71.0m) were received from BIS, under the legislative powers referred to in Note 4, to cover the costs of spectrum management, of which £19.9m (2008/09: £22.2m) was received in advance to cover costs in the first quarter of the following year.

In 2009/10 grants totalling £73.3m (2008/09: £74.6m) were received to cover the 2009/10 cost of spectrum management expenditure. At the end of 2009/10 there was unused grant of £2.7m (2008/09: £3.4m) to be carried forward into 2010/11.

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

	31 March 2010	31 March 2009
	£'000	£'000
<b>Spectrum fees transferred</b>		
Wireless Telegraphy Act cash transferred	115,591	132,522
Non-WTA spectrum fees transferred	50,351	50,351
<b>Total spectrum fees transferred by Ofcom to BIS for surrender to the Consolidated Fund</b>	<b>165,942</b>	<b>182,873</b>
<b>Related Costs</b>		
Grant in Aid paid to Ofcom for other spectrum funding (including spectrum auctions)	(7,129)	(2,838)
Spectrum management Grant in Aid paid to Ofcom	(67,645)	(70,958)
<b>Total Spectrum Grant received by Ofcom from BIS</b>	<b>(74,774)</b>	<b>(73,796)</b>

## 7. Financial Penalties

Penalties imposed and paid in the year were as follows:

	31 March 2010	31 March 2009
	£'000	£'000
<b>Sector</b>		
Broadcasting	362	7,910
Radio	15	-
Networks & Services	18	121
	<b>395</b>	<b>8,031</b>

All details of the penalties can be found on the Ofcom website and can be found at:  
<http://www.ofcom.org.uk/about/accoun/penalties0910/>

## 8. Balance at End of the Financial Year

The cash balance of £4.3m (2008/09: £1.2m) at the end of the year was deposited in a bank account controlled by Ofcom. It predominantly consisted of Wireless Telegraphy Act fees received into the bank account on the last 6 days of the year and payable to BIS for onward transmission to the Consolidated Fund. This balance will be included in the payment made to BIS in the following month. The remaining balance from additional payments was due to timing of the payment to the Northern Ireland consolidated fund, which was paid on 1 April 2010, as agreed with the Department of Finance and Personnel – Northern Ireland (DFPNI).

## 9. Spectrum Auctions

No spectrum auctions took place in 2009/10.