

Presented to Parliament pursuant to Section 400(6) of the Communications Act 2003

Office of Communications Section 400 Licence Fees and Penalties Account 2010-2011

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The National Audit Office scrutinises public spending on behalf of Parliament.

The Comptroller and Auditor General, Amyas Morse,
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on the economy, efficiency and effectiveness with which departments
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Section 400 Accounts: Review of 2010-2011

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), and the Department of Culture, Media and Sport (DCMS) 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 £197.0m (2009/10: £192.7m) to the public purse. However, £5.9m was refunded from the consolidated funds relating to a license review concluded in 2010/11. The net result is that £191.1m was passed across, as outlined below.

Wireless Telegraphy Act licence fees

On 31 March 2011 there were 49,069 (2009/10: 52,557) 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 2010/11 Ofcom passed £187.6m (2009/10: £165.9m) 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 2010/11 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 (qualifying revenue).

In 2010/11 Ofcom received £9.2m (2009/10: £26.5m) in additional payments from broadcasters. The cash bid element totalled £4.1m (2009/10: £5.7m) and payments generated from the percentage of qualifying revenue were £5.1m (2009/10: £20.8m).

The Broadcasting Act 1990 and the Communications Act 2003 state that licensees who obtained their licences through competitive tender can ask for the financial terms of their licences to be reviewed at specified periods. In 2010/11 a number of broadcasters requested a review of their financial terms to reflect the decreasing scarcity value of analogue spectrum resulting from the growth in digital broadcasting. As a consequence of the reviews, £5.9m of 2010/11 cash was remitted back to licensees from the UK Exchequer. Therefore, the net amount of Additional Payments in 2010/11 was £3.3m.

The overall reduction reflects the reduced terms of Chanel 3 and 5 license holders to nominal terms and the trend of increasing penetration of digital technologies in UK homes.

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 2010/11 Ofcom collected fines totalling £0.2m (2009/10: £0.4m).

A list of penalties imposed during 2010/11 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-2010-11/>

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

29 June 2011

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 2011 under 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 on Ofcom's 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 accounting policies are appropriate to the Office of Communications Section 400 Licence Fees and Penalties account's circumstances and have 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 read all the financial and non financial information in the annual report to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my certificate.

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 ending 31 March 2011; and
- the financial statements have been properly prepared in accordance with 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 2010/11" 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

29 June 2011

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

Receipts and Payments Accounts for the year ended 31 March 2011

		Year Ended 31 March 2011	Year Ended 31 March 2010
	Notes	£000	£000
Additional Payments by licensees	2	9,139	26,483
Refunds	3	(5,875)	(1)
Net additional payments by licensees		3,264	26,482
Payments under the Wireless Telegraphy Act 1998 (c.6)	4	110,517	118,608
Fees received from Government Departments	5	73,129	50,351
Interest Received		19	14
Total Spectrum fee payments received		183,665	168,973
Financial penalties	7	235	395
Total receipts for the year		187,164	195,850
Payments to UK Department for Business, Innovation and Skills	4 & 6	(187,576)	(165,942)
Payments to the United Kingdom Consolidated Fund		(3,240)	(26,265)
Payments to the Northern Ireland Consolidated Fund		(317)	(501)
Payments to the Treasury of the Isle of Man		(4)	(7)
Payments to the Treasury of the Bailiwick of Jersey		(3)	(5)
Payments to the Treasury of the Bailiwick of Guernsey		(2)	(3)
Net payments to consolidated funds and treasuries		(3,566)	(26,782)
Total payments for the year		(191,142)	(192,724)
(Deficit)/excess of receipts over payments for the year		(3,978)	3,126

Statement of Cash Balances as at 31 March 2011

	Notes	31 March 2011 £000	31 March 2010 £000
Balance at beginning of the year		4,309	1,183
Refund to auction bidders from previous year	9	–	–
Excess/(Deficit) of receipts over payments for the year		(3,978)	3,126
Balance at end of year		331	4,309
Spectrum auction deposits	9	–	–
Total cash balance		331	4,309
Cash balance owed to			
UK Department for Business, Innovation and Skills		37	4,214
Channel 3 & 5 license holders		267	
Consolidated Funds and Treasuries		27	95
	8	331	4,309
Refundable to auction bidders		–	–

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

Ed Richards
Chief Executive
Office of Communications

29 June 2011

Notes to the Accounts

For the year ended 31 March 2011

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 £108.2m (2009/10: £162.1m) 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 £3.2m (2009/10: £0.3m) 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 £1.3m (2009/10: £1.5m; 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 £2.5m (2009/10: £4.2m) which is as a result of applying the digital penetration percentage rates to the qualifying revenue. Using RAJAR data to calculate digital rebates for the national radio licensees, rebates totalling £3,279 (2009/10: £3,341) were made during the year to one independent national radio licence holder.

3 Refunds

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

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.

Holders of Channel 3 and Channel 5 licences are entitled to seek a review of the financial terms of their licences in certain limited circumstances – in this case a trigger by the last Government brought into force the “must offer” provisions of the Communications Act which allowed licensees to apply for a review of their financial terms under section 226, to determine the financial terms payable from 2010 to 2014.

The review found that the financial terms for the licensees should reduce to nominal amounts, as with other licensees that already pay nominal terms. The additional payments reduced to £10,000 per annum for all licensees that applied for new terms.

In December 2009, applications for reviews were received from seven regional ITV channels, UTV and Channel 5. These licences were reviewed by Ofcom, and the new terms finalised and accepted by the applicants in September 2010. At this point, as the new terms took effect retrospectively from 1 January 2010, overpayments totalling £11.0m were refunded to the licensees. The refunds were part funded by a £5.9m transfer from the HM Treasury Consolidated Fund covering 10/11 cash paid to HMT. The remaining balance for 09/10 cash paid to the HM Treasury Consolidated Fund was funded through a grant paid by the Department of Business, Innovation and Sport (BIS) totalling £5.1m.

Monies paid into the Consolidated Funds of Northern Ireland and the Isle of Man pertaining to the licensee rebate totalled £0.3m. Following an agreement with BIS, £0.3m has been retained by Ofcom from the collection of WT Act Spectrum receipts to pay outstanding monies due. Remaining monies due will be paid in April 2011, and the apportionment of 10/11 Spectrum receipts due to Northern Ireland and the Isle of Man will be adjusted to reflect this.

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 (DCMS from 01 April 2011), 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, £187.6m (2009/10: £165.9m) 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 £64.2m were issued with receipts of £73.1m (2009/10: £50.4m) paid from Government departments. The excess in payment over invoices was primarily due to the timing of a 2009/10 invoice totalling £8.9m, which was paid in 2010/11 and so has been included in the 2010/11 accounts. 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 £53.0m (2009/10: £67.6m) were received from BIS, under the legislative powers referred to in Note 4, to cover the costs of spectrum management. These accounts only reflect cash receipts and payments pertaining to Section 400. A full disclosure of the Grant-in-aid received to cover spectrum management costs can be found in the Ofcom main accounts.

In total, £75.5m (2009/10: £73.3m) of grants were received to cover the cost of spectrum management expenditure in 2010/11. At the end of 2010/11 there was unused grant of £3.6m (2009/10: £2.7m). Having reached the end of a spending review period, the unused grant will be returned to BIS in 2011/12.

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

	31 March 2011 £000	31 March 2010 £000
Spectrum fees transferred		
Wireless Telegraphy Act cash transferred	114,447	115,591
Non-WTA spectrum fees transferred	73,129	50,351
Total spectrum fees transferred by Ofcom to BIS for surrender to the Consolidated Fund	187,576	165,942
Related costs		
Grant in Aid paid to Ofcom for other spectrum funding (including spectrum auctions, awards and clearance)	(16,398)	(7,129)
Spectrum management Grant in Aid paid to Ofcom	(52,980)	(67,645)
Total Spectrum Grant received by Ofcom from BIS	(69,378)	(74,774)

7 Financial Penalties

Penalties imposed and paid in the year were as follows:

	31 March 2011 £000	31 March 2010 £000
Sector		
Broadcasting	235	362
Radio	0	15
Networks & Services	0	18
	235	395

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-2010-11/>

8 Balance at End of the Financial Year

The cash balance of £0.3m (2009/10: £4.3m) 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 BIS for onward transmission to the Consolidated Fund. The balance also includes monies retained for rebates owed to Channel 5 and UTV (note 3).

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). This is to be transferred to DFPNI in April 2011.

9 Spectrum Auctions

No spectrum auctions took place in 2010/11.

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