



Section 400 Licence Fees and Penalties Account

Year ended 31 March 2009

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SECTION 400 ACCOUNTS: REVIEW OF 2008/09

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 Enterprise & Regulatory Reform (BERR).

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 £226.3m (2007/08: £230.9m) to the public purse, as outlined below.

Wireless Telegraphy Act licence fees

On 31 March 2009 there were 48,529 (2007/08: 52,506) 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 2008/09 Ofcom passed £182.9m (2007/08: £173.6m) collected from WT Act licensees and the interest earned on cash balances held to BERR.

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 2008/09 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 2008/09 Ofcom received £35.4m (2007/08: £53.1m) in additional payments from broadcasters. The cash bid element totalled £6.0m (2007/08: £9.4m) and payments generated from the percentage of qualifying revenue were £29.4m (2007/08: £43.7m).

The overall reduction is predominantly due to the trend in the increase in digital penetration rates of 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 2008/09 Ofcom collected fines totalling £8.0m (2007/08: £4.2m). The material increase is a result of the financial penalties imposed in the broadcasting sector due to serious breaches of the ITC Programme Code 2002 by broadcasters in respect of the use of Premium Rate Telephone Services in Participation TV.

A list of penalties imposed during 2008/09 is published on Ofcom's website and can be found at:
http://www.ofcom.org.uk/about/accoun/reports_plans/annrep0708/penalties0809/

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: June 2009

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 2009 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

The Office of Communications and Chief Executive as Accountable Officer are responsible for preparing the Review of 2008/09 and the financial statements in accordance with Section 400 (4) of the Communications Act 2003 and the Secretaries of State directions made thereunder and for ensuring the regularity of financial transactions. These responsibilities are set out in the Statement of the Office of Communications' Responsibilities.

My responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements, and with International Standards on Auditing (UK and Ireland).

I report to you my opinion as to whether the financial statements properly present the receipts and payments and whether the Financial Statements are properly prepared in accordance with Section 400 (4) of the Communications Act 2003 and the Secretaries of State directions made thereunder. I report to you whether, in my opinion, the information included in the Review of 2008/09 is consistent with the financial statements. I also report whether in all material respects the receipts and payments have been applied to the purposes intended by Parliament and conform to the authorities which govern them.

In addition, I report to you if the Office of Communications has not kept proper accounting records, if I have not received all the information and explanations I require for my audit, or the information specified by relevant authorities is not disclosed.

Basis of Audit Opinion

I conducted my audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. My audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Office of Communications and Accountable Officer in the preparation of the financial statements.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error, and that 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. In forming my opinion I have also evaluated the overall adequacy of the presentation of information in the financial statements.

Opinions

Audit Opinion

In my opinion:

- the financial statements properly present the receipts and payments, in accordance with Section 400 (4) of the Communications Act 2003 and directions made thereunder by the Secretaries of State for the year ended 31 March 2009;
- 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 thereunder; and
- the information included in the Review of 2008/09 is consistent with the financial statements.

Audit 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.

Report

I have no observations to make on these financial statements.

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

**National Audit Office
151 Buckingham Palace Road
Victoria
London SW1W 9SS**

Date: 2009

RECEIPTS AND PAYMENTS ACCOUNTS
for the year ended 31 March 2009

	Notes	Year Ended 31 March 2009 £'000	Year Ended 31 March 2008 £'000
Additional Payments by licensees	2	35,453	53,098
Refunds	3	(18)	(32)
NET ADDITIONAL PAYMENTS BY LICENSEES		35,435	53,066
Payments under the Wireless Telegraphy Act 1998 (c.6)	4	128,695	124,324
Fees received from Government Departments	5	50,351	50,339
Interest Received		479	507
TOTAL SPECTRUM FEE PAYMENTS RECEIVED		179,525	175,170
Financial penalties	7	8,031	4,199
TOTAL RECEIPTS FOR THE YEAR		222,991	232,435
Payments to Department for Business Enterprise & Regulatory Reform	4 & 6	(182,873)	(173,607)
Payments to the United Kingdom Consolidated Fund		(42,327)	(55,870)
Payments to the Northern Ireland Consolidated Fund		(1,088)	(1,363)
Payments to the Treasury of the Isle of Man		(18)	(18)
Payments to the Treasury of the Bailiwick of Jersey		(20)	(12)
Payments to the Treasury of the Bailiwick of Guernsey		(13)	(8)
NET PAYMENTS TO CONSOLIDATED FUNDS AND TREASURIES		(43,466)	(57,271)
TOTAL PAYMENTS FOR THE YEAR		(226,339)	(230,878)
(DEFICIT)/EXCESS OF RECEIPTS OVER PAYMENTS FOR THE YEAR		(3,348)	1,557

STATEMENT OF CASH BALANCES
as at 31 March 2009

	Notes	31 March 2009 £000	31 March 2008 £000
Balance at beginning of the year		4,531	3,024
Refund to auction bidders from previous year	9		(50)
Excess/(Deficit) of receipts over payments for the year		(3,348)	1,557
Balance at end of year		1,183	4,531
Spectrum auction deposits	9	-	-
TOTAL CASH BALANCE		1,183	4,531
CASH BALANCE OWED TO			
Department for Business Enterprise & Regulatory Reform	8	1,182	4,530
Consolidated Funds and Treasuries		1	1
		1,183	4,531
Refundable to auction bidders		-	-
		1,183	4,531

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

Ed Richards
Chief Executive
Office of Communications

Date: June 2009

NOTES TO THE ACCOUNTS

For the year ended 31 March 2009

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 £159.8m (2007/08: £167.5m) 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 £0.5m (2007/08: £0.8m) 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 £1.4 m (2007/08: £5.2m) were made to the television licensees pertaining to the first three quarters of this financial year.

For radio licensees, additional payments stated are calculated after the deduction of £8.6m (2007/08: £11.0m) which is as a result of applying the digital penetration percentage rates to the qualifying revenue. Following the decision to use RAJAR data to calculate a digital rebate for the national radio licensees, rebates totalling £0.1m (2007/08: £0.1m) were made during the year to the holders of the three independent national radio licences.

3. Refunds

£0.02m (2007/08 £0.03m) was refunded due to an overpayment. This was funded from cash received from other licensees in the month but not transferred to the Consolidated Funds and Treasuries.

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 BERR, 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, £182.9m (2007/08: £173.6m) was paid to BERR 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, fees totalling £50.4m (2007/08: £50.3m) were received from Government departments. They 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 £71.0m (2007/08: £74.7m) were received from BERR, under the legislative powers referred to in Note 4, to cover the costs of spectrum management, of which £22.2m (2007/08: £25.8m) was received in advance to cover costs in the first quarter of the following year.

In 2008/09 grants totalling £74.6m (2007/08: £73.1m) were received to cover the 2008/09 cost of Spectrum Management expenditure. At the end of 2008/09 there was unused grant of £3.4m (2007/08: £0m) to be carried forward into 2009/10.

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

	31 March 2009	31 March 2008
	£'000	£'000
Spectrum fees transferred		
Wireless Telegraphy Act cash transferred	132,522	123,268
Non-WTA spectrum fees transferred	50,351	50,339
Total spectrum fees transferred by Ofcom to BERR for surrender to the Consolidated Fund	182,873	173,607
Related Costs		
Grant in Aid paid to Ofcom for other spectrum funding (including spectrum auctions)	(2,838)	(6,920)
Spectrum management Grant in Aid paid to Ofcom	(70,958)	(74,735)
Total Spectrum Grant received by Ofcom from BERR	(73,796)	(81,655)

7. Financial Penalties

Penalties imposed and paid in the year were as follows:

	31 March 2009	31 March 2008
	£'000	£'000
Sector		
Broadcasting	7,910	4,154
Networks & Services	121	45
	8,031	4,199

All details of the penalties can be found on the Ofcom website.

NOTES TO THE ACCOUNTS - continued
For the year ended 31 March 2009

8. Balance at End of the Financial Year

The cash balance of £1.2m (2007/08: £4.5m) 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 day of the year and payable to BERR for onward transmission to the Consolidated Fund. This balance will be included in the payment made to BERR in the following month.

9. Spectrum Auctions

On the 10 April 2008, Ofcom received £0.5m initial deposits from companies taking part in the auction of a WT Act licence for use of the 1452-1492 MHz band (L) band of spectrum. Ofcom held the funds in respect of ten deposits in a separate bank account. Except in certain circumstances specified in the relevant Regulations, these deposits are refundable to unsuccessful bidders. The licence was awarded in May 2008 at a price of £8.3m. The deposits of the unsuccessful bidders were repaid in May 2008 and the deposit of the successful bidder was included in the receipts and payments accounts.

A further auction took place in January 2009 for the use of 758-766 MHz spectrum band in the Manchester area. Only one deposit was received at the end of January. This was awarded to the applicant in February 2009.

In February a further auction took place in Cardiff for the use of the 542-550 MHz spectrum band. Only one deposit was received. It was awarded to the applicant in February.

The receipts from the auction awards are included in the payments under the Wireless Telegraphy Act figure and the amount received was transferred to BERR.