
Retention of Amounts paid under the Wireless Telegraphy Act 2006

Statement of Principles

s.401 Communications Act 2003

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1. Overview

Under the Communications Act 2003, certain fees, charges and penalties which Ofcom receives from stakeholders must be paid into the government's Consolidated Fund. Ofcom may, however, make a statement setting out the principles under which it may retain amounts in order to fund its spectrum management work and to meet certain costs which it cannot otherwise recover through imposing fees and charges.

This document sets out the principles under which Ofcom may retain certain amounts which have been paid to it under the Wireless Telegraphy Act 2006. It also sets out why, in Ofcom's view, the provision made for retaining these amounts is likely to secure that such amounts are objectively justifiable and proportionate to the likely costs which it is practicable for Ofcom to estimate.

Ofcom has obtained the consent of the Treasury and the Secretary of State to make this Statement.

2. Introduction

- 2.1 Ofcom is the communications regulator in the UK and has a range of legal duties set out principally in the Communications Act 2003 and in the Wireless Telegraphy Act 2006 (“WTA”). These duties include (but are not limited to) ensuring that:
- i) the UK’s range of electronic communications networks and services operate effectively;
 - ii) a wide range of high-quality television and radio programmes are provided, which appeal to a range of tastes and interests;
 - iii) the public is protected from harmful or offensive material and that individuals are protected from being treated unfairly in television and radio programmes, and from having their privacy infringed;
 - iv) a universal postal service is provided in the UK (namely, a six-days-a-week, universally priced delivery and collection service across the country); and
 - v) the radio spectrum is managed and used in the most effective way.
- 2.2 Ofcom’s functions in relation to regulating communications networks and services, broadcasting, and postal services are funded through its powers to levy fees from the relevant industry stakeholders, for example, through issuing broadcast licences, imposing administrative charges for providing electronic communications networks, services and associated facilities, or through imposing administrative charges to certain providers of postal services.
- 2.3 Ofcom also receives sums from stakeholders in relation to its functions of managing the radio spectrum, for example, in the form of licence fees when issuing wireless telegraphy licences, or bids received from auctioning radio spectrum licences. Prior to the Digital Economy Act 2017, Ofcom was required to pay such sums into the Consolidated Fund. The government, via the Department for Digital, Culture, Media and Sport, then provided funding to Ofcom in the form of grant in aid for the purposes of funding Ofcom’s spectrum management functions and its costs incurred from undertaking functions for which it does not otherwise have power to impose fees or charges.
- 2.4 The Digital Economy Act 2017 introduced legislative amendments which permit Ofcom to retain sums received in connection with its functions under the WTA (‘WTA receipts’). Ofcom may retain such sums in order to fund its general spectrum management functions, as well as to meet the costs of undertaking its other functions for which it cannot levy fees and charges¹. The relevant WTA receipts include, in particular²:
- i) Charges levied in relation to the issue of wireless telegraphy licences³;

¹ Further detail regarding these costs is set out in section 2 of this Statement.

² Section 53D and Chapters 1 and 2 of Part 2 of the WTA.

³ Section 12 of the WTA in relation to licences issued under section 8 of that Act

- ii) Amounts received from auctioning the radio spectrum⁴;
 - iii) Charges levied in relation to the grant of recognised spectrum access⁵; and
 - iv) Fees levied for the registration of providers of dynamic spectrum access services⁶.
- 2.5 In order to retain amounts received from its WTA receipts, Ofcom must make a Statement which sets out⁷:
- i) the principles under which it may retain any, or all, of the amounts paid to it by way of WTA receipts; and
 - ii) the costs in respect of which these amounts may be retained (which may include costs other than those incurred in the exercise of its functions for which the WTA receipts were raised).
- 2.6 The provision made in this Statement for retaining WTA receipts must be such as appears to Ofcom likely to secure that such amounts are objectively justifiable and proportionate to the likely costs which it is practicable for Ofcom to estimate.
- 2.7 A surplus or deficit shown in Ofcom's annual accounts⁸ must be carried forward and taken into account in determining what is required by Ofcom in relation to the following year for meeting the costs set out in the Statement.
- 2.8 In addition, the Statement may make provision which requires that:
- a) amounts actually received in one year are to be treated as referable to costs incurred in that year and in one or more subsequent years; and
 - b) for those amounts to be brought into account in each of those years in accordance with an apportionment as set out in the Statement.
- 2.9 Ofcom must obtain the consent of the Treasury and the Secretary of State when making, revising or withdrawing a Statement. Where Ofcom make or revise a Statement, we must also publish so much of it as it appears necessary in order to demonstrate that it complies with the requirements set out in paragraph 2.6 above.
- 2.10 Ofcom shall, from time to time, review this Statement, the first review to be no later than 5 years from the date on which the Secretary of State and Treasury have provided their consent. At this time the Secretary of State and Treasury, if they so decide, may request for a new statement to be drafted to replace the existing one within 12 months. The purpose of reviewing the Statement is to ensure that the Principles it contains remain fit for purpose and that the process for retaining WTA receipts is operating properly and effectively. Ofcom will make such revisions to the Statement as are necessary in order to ensure that it continues to reflect the purpose and intention of section 401 of the

⁴ Resulting from bidding procedures conducted under sections 14 or 23 of the WTA

⁵ Section 21 of the WTA.

⁶ Section 53D of the WTA.

⁷ Section 401 of the Communications Act 2003 (as amended).

⁸ As prepared under section 400(4) of the Communications Act 2003.

Communications Act 2003. As set out in paragraph 1.9 above, any subsequent revisions to the Statement will be subject to the consent of the Secretary of State and the Treasury.

- 2.11 Further detail as to the costs for which Ofcom may seek to retain WTA receipts is set out in Section 2 of this Statement. In Section 3, we set out the Principles under which WTA receipts may be retained, including Ofcom’s ongoing commitment to the Framework Document which it has agreed with the Department for Digital, Culture, Media and Sport⁹ (‘the Framework Document’) and having appropriate regard to “Managing Public Money¹⁰”. We also set out our reasons for believing that the provision made in this Statement for retaining WTA receipts is objectively justifiable and proportionate to the likely costs which it is practicable for Ofcom to estimate.

⁹ <https://www.gov.uk/government/publications/the-office-of-communications-ofcom-framework-document>

¹⁰ <https://www.gov.uk/government/publications/managing-public-money>

3. Costs in relation to which WTA receipts may be retained

- 3.1 This section of the Statement sets out the types of costs for which Ofcom may seek to retain WTA receipts.
- 3.2 There are two main categories of cost for which Ofcom may seek to retain WTA receipts. The first of these categories comprises the costs which Ofcom may incur in undertaking any, or all, of its spectrum management functions. These functions include (amongst other things):
- i) Providing advice in relation to the use of the radio spectrum for wireless telegraphy¹¹, and advice and assistance to people complaining of interference with wireless telegraphy¹²;
 - ii) Granting wireless telegraphy licences, and all matters associated with the ongoing administration of those licences (for example, monitoring general compliance, variations and revocations)¹³;
 - iii) Conducting auction procedures for the purposes of granting wireless telegraphy licences¹⁴;
 - iv) Making grants of recognised spectrum access, and conducting auction procedures for those purposes¹⁵;
 - v) Conducting enforcement activity in relation to the unauthorised use of a wireless telegraphy station or apparatus; the misuse of wireless telegraphy¹⁶; or unlawful broadcasts from sea or air¹⁷;
 - vi) Regulating the sale and use of wireless telegraphy apparatus¹⁸; and
 - vii) Representing the UK, the Channel Islands, the Isle of Man and any British overseas territory on international (and other) bodies in relation to the use of the radio spectrum for wireless telegraphy¹⁹.
- 3.3 Secondly, Ofcom performs a range of statutory functions for which it cannot raise fees or charges from stakeholders to cover the costs (referred to in this Statement as ‘non-funded functions’). These non-funded functions have traditionally been funded from grant in aid,

¹¹ Section 1 of the WTA.

¹² Section 4 of the WTA.

¹³ Section 8 and Schedule 1 of the WTA.

¹⁴ Section 14 of the WTA.

¹⁵ Sections 18 and 23 of the WTA.

¹⁶ Part 2, Chapters 4 and 5 of the WTA.

¹⁷ Part 5 of the WTA.

¹⁸ Part 3 of the WTA;

¹⁹ Section 22 of the Communications Act 2003.

paid to Ofcom by the government. Such costs may arise from Ofcom's duties to (amongst other things):

- i) Investigate and take enforcement action in relation to silent and abandoned (i.e. "nuisance") telephone calls;
- ii) Investigate and take enforcement action in relation to anti-competitive agreements between undertakings, and the abuse by undertakings of a dominant position, where Ofcom shares concurrent powers with the Competition and Markets Authority ('CMA') under the Competition Act 1998;
- iii) Make market investigation references, where Ofcom shares concurrent powers with the CMA under the Enterprise Act 2002;
- iv) Investigate and take enforcement action in relation to general consumer protection, where Ofcom shares concurrent powers with the CMA (and other bodies) under general consumer law, including the Enterprise Act 2002;
- v) Consider the application of the 'public interest test' to mergers involving newspaper and/or broadcasting enterprises, in accordance with the Enterprise Act 2002;
- vi) Conduct 'local media assessments' to assist the CMA in its assessment of mergers involving local media merger cases which raise prima facie competition concerns;
- vii) Report to the Secretary of State on the functioning of the media ownership rules²⁰; and
- viii) Investigate 'super-complaints'²¹ made by designated consumer bodies, where Ofcom shares concurrent powers with the CMA under the Enterprise Act 2002.

3.4 In addition to the specific examples of non-funded functions listed, above, Ofcom may, from time to time, undertake other activities which fall within its statutory functions for which it does not have the power to raise fees or charges. Furthermore, Ofcom may undertake activities in preparation for new statutory duties, before Parliament has given us those duties and afterwards while Ofcom is developing the regulatory framework for raising fees or charges. These include Video Sharing Platform and related Online duties. All these activities will be considered 'non-funded functions costs' for which Ofcom may retain WTA receipts.

3.5 Any such costs will be objectively justifiable and proportionate as detailed in paragraph 3.4 and subject to the expenditure caps discussed further in Section 3 of this Statement²².

²⁰ The media ownership rules are set out in the Communications Act 2003, the Broadcasting Act 1990 and the Enterprise Act 2002.

²¹ 'Super' complaints may arise where any feature, or combination of features, of a market in the UK for goods or services is, or appears to be, significantly harming the interests of consumers. Ofcom has a duty to respond to super-complaints made to it under the Enterprise Act 2002 if the complaint concerns the electronic communications, broadcasting and postal services sector.

²² As set out in the Framework Document (discussed further in Section 3), Ofcom shall have appropriate regard to Managing Public Money, for instance, in relation to novel, contentious or repercussive proposals.

Ofcom will, in its regular meetings with the Department for Digital, Culture, Media and Sport²³, also notify the Department in advance before retaining to cover the cost of any non-funded functions which are not listed in paragraph 3.3 above.

- 3.6 In Section 4, we also set out the principles under which Ofcom will estimate the amount of its spectrum management and non-funded functions costs in each financial year, as well as the principles under which it will determine whether to retain any of the WTA receipts it receives.

²³ See paragraph 4.13.

4. Statement of Principles – retention of amounts paid to Ofcom under WTA

- 4.1 The principles under which Ofcom may retain any, or all, of the amounts paid to it in the form of WTA receipts are set out in this section of the Statement.
- 4.2 Ofcom may retain such amount(s) as it considers are required to meet, but not exceed, the costs incurred in carrying out the functions set out in Section 3 of this Statement. In summary, those costs relate to:
- i) Ofcom undertaking its spectrum management functions; and
 - ii) Ofcom undertaking other functions for which it does not have a power to raise fees or charges ('non-funded functions').

Overview of Ofcom's general approach

- 4.3 In each year when Ofcom publishes its annual Tariff tables²⁴, it will provide a breakdown of the planned spend in each new year by sector. The sectors provided will detail spectrum management and the non-funded functions costs. Further detail as to how Ofcom will estimate these costs is set out below.
- 4.4 Ofcom will also, to the extent reasonably practicable, estimate the WTA receipts which it is likely to receive²⁵ over the course of the same financial period. This estimate is likely to be based primarily on fees and charges which it is likely to receive, but also on specific factors which may arise during a particular year, such as whether or not a spectrum auction is due to take place.
- 4.5 Based on Ofcom's estimates above, WTA receipts will be retained in order to meet Ofcom's spectrum management and non-funded functions costs on a month-to-month basis, while the balance of WTA receipts received will be transferred to the Consolidated Fund, via the Department for Digital, Culture, Media, and Sport, as detailed further below.
- 4.6 Ofcom will retain WTA fees in advance of the costs which it anticipates will arise each month. For example, January's WTA's receipts will be retained on the basis of the estimate of February's spectrum management and non-funded functions costs.
- 4.7 Ofcom's spectrum management and non-funded functions costs are likely to vary month to month, depending on the scheduling and budgeting of certain activities taking place over the course of each financial year. In addition, certain costs may arise during the course of the year which it was not reasonably practicable for Ofcom to foresee at the outset²⁶. This

²⁴ <https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans/tariff-tables>

²⁵ In accordance with regulations made under sections 12 and 21 of the WTA.

²⁶ For example, the Secretary of State might request Ofcom to undertake a public interest test into the plurality of media ownership under the Enterprise Act 2002. There may also be other similar activities or pieces of work which it is not reasonably practicable for Ofcom to foresee at the outset.

means that the amount of WTA receipts which are retained is also likely to vary from month to month.

4.8 For each month, Ofcom will adjust the amount of WTA receipts which it needs to retain, following the actualisation of the costs incurred in the previous month. This process is illustrated below, where we set out how, in January, we will actualise the costs for December and estimate the amount of WTA receipts which will need to be retained for February:

- i) By approximately mid-January, Ofcom will:
 - Have calculated the actual expenditure which was incurred in December;
 - Have calculated the amount of expenditure forecasted for February;
 - Inform the Department of Digital, Culture, Media and Sports of our calculations and the amount of WTA receipts which we forecast we will need to retain for February.
- ii) Within approximately the first week of February, Ofcom will:
 - Reconcile January's WTA receipts;
 - Any surplus of WTA receipts from the amounts retained to fund February's spectrum management and non-funded functions costs will be transferred to the Department for Digital, Culture, Media and Sport for the purposes of payment into the Consolidated Fund;

4.9 WTA receipts which are not retained by Ofcom in accordance with this Statement will be paid into the Consolidated Fund monthly, in arrears. Ofcom's Accounting Officer will, in accordance with the Framework Document²⁷, ensure that any payment made to the Department for Digital, Culture, Media and Sport for the purposes of the Consolidated Fund is accurate and timely (i.e. normally within three working days following the end of each month)²⁸.

4.10 At the end of each financial year, Ofcom will need to ensure that it has sufficient funds available to meet its costs forecast to be incurred in undertaking its spectrum management and non-funded functions costs in the following month of April. In order to achieve this, Ofcom will, in the final month of each financial year (i.e. March), retain WTA receipts which have been received in that month and treat them as referable to costs incurred in the first month of the new financial year (i.e. April). The way Ofcom will do this is by budgeting its planned expenditure for April and apportioning the WTA receipts received in March accordingly. WTA receipts which are subsequently received over the course of April will then be retained or paid into the Consolidated Fund (via the Department for Digital, Culture, Media and Sport) in exactly the same way as all other months.

²⁷ <https://www.gov.uk/government/publications/the-office-of-communications-ofcom-framework-document>

²⁸ Such payments to the Consolidated Fund will include any interest which may have been earned on WTA receipts which have been retained in Ofcom's account.

- 4.11 Ofcom recognises that it is accountable to Parliament. Accordingly, in determining the amount of WTA receipts to be retained, it will also act in accordance with the principles set out in the Framework Document. In particular, Ofcom will have regard to:
- i) such general guidance concerning the management of the affairs of public bodies as it considers appropriate; and
 - ii) subject to any such guidance, and only to the extent that they may reasonably be regarded as applicable in relation to a statutory corporation, to generally accepted principles of good corporate governance
- 4.12 Ofcom’s spectrum management and non-funded functions costs are likely to vary month to month, depending on the scheduling and budgeting of certain activities taking place over the course of each financial year. In addition, certain costs may arise during the course of the year which it was not reasonably practicable for Ofcom to foresee at the outset²⁹. This means that the amount of WTA receipts which are retained is also likely to vary from month to month.
- 4.13 Ofcom will meet regularly (i.e. at least quarterly) with the Department for Digital, Culture, Media and Sport to ensure appropriate scrutiny and transparency in the implementation of the Statement and to discuss best ways of working together in order to demonstrate the proper, effective and efficient retention of WTA receipts, in accordance with the Principles set out in this Statement.
- 4.14 Ofcom’s decisions with respect to retaining WTA receipts will be subject to the same auditing arrangements as apply to all its financial decisions, as set out the Framework Document. In particular, Ofcom maintains arrangements for internal audit and has established effective controls to prevent fraud and theft. Ofcom also has regard to the Treasury’s Public Sector Internal Audit Standards (PSIAS’)³⁰ as appropriate. Each year, the Comptroller and Auditor General examines, certifies and reports on Ofcom’s Annual Accounts under the Communications Act 2002.

Estimating costs

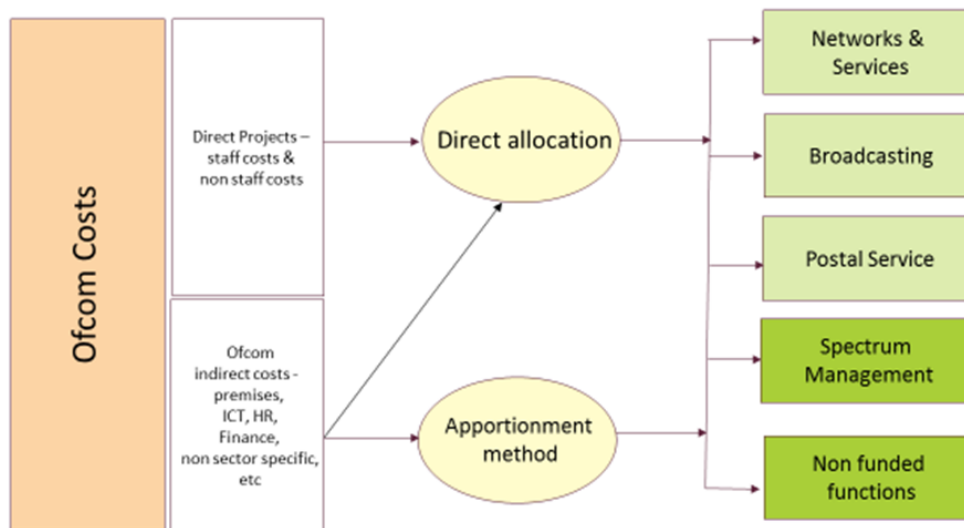
- 4.15 In estimating the spectrum management and non-funded functions costs likely to be incurred over the course of each financial year, Ofcom will base its approach on the methodology set out in its Statement of Charging Principles³¹. In particular, Ofcom will estimate such costs on the basis of expenditure which is directly attributable to undertaking the relevant work (i.e. “direct allocation”), together with expenditure which represents a fair proportion of Ofcom’s overheads in undertaking its overall regulatory functions (i.e. the “apportionment method”). Ofcom’s method for allocating costs across its regulated sectors is set out below, where spectrum management and non-funded

²⁹ For example, the Secretary of State might request Ofcom to undertake a public interest test into the plurality of media ownership under the Enterprise Act 2002. There may also be other similar activities or pieces of work which it is not reasonably practicable for Ofcom to foresee at the outset.

³⁰ <https://www.gov.uk/government/publications/public-sector-internal-audit-standards>

³¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0019/51058/charging_principles.pdf

functions costs are specifically highlighte



- 4.16 As set out in the Statement of Charging Principles, the fundamental feature of Ofcom’s approach to attribution is adherence to the key principle of ‘causality’. Each item of cost recorded in Ofcom’s accounts is attributed to the activities within each sector, in this case, either spectrum management or non-funded functions costs.
- 4.17 Direct costs of activities are recorded directly and indirect costs are added by either allocation or apportionment. Allocated costs represent items of operating costs or capital expenditure which can be assigned wholly to a particular sector or activity by virtue of information in the accounting records. Apportioned costs represent overheads which are spread over each of the activities on a fair and equitable basis using standard cost apportionment methods.
- 4.18 In each year, Ofcom consults on its Annual Plan³² for the forthcoming year and subsequently sets a budget that will deliver the consulted-upon programme of work. The budget is allocated and apportioned to the sectors as set out above and as such the estimated costs for the spectrum management and non-funded functions are determined. Ofcom publishes the estimated costs for all sectors, including spectrum management and non-funded functions, in its annual Tariff Tables.
- 4.19 Ofcom operates within financial expenditure caps, as agreed with the Department for Digital, Culture, Media and Sport in conjunction with HM Treasury. The first of these caps covers its expenditure in relation to Ofcom’s general regulatory functions (such as those referred to in paragraph 1.2 above), spectrum management and non-funded functions costs. Within that overall expenditure cap is a further cap which applies just to its expenditure in carrying out its spectrum management and non-funded functions work. Ofcom will continue to adhere to, and will not exceed, these expenditure caps when estimating its likely spectrum management and non-funded functions costs.

³² <https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans>

- 4.20 When estimating its spectrum management and non-funded functions costs, Ofcom will also apply the same principles as set out in the Statement of Charging Principles, namely:
- i) **Objectivity:** cost allocations are not intended to benefit any particular sector or activity;
 - ii) **Consistency:** There will be consistency in approach between budget and actual costs, and from year to year; and
 - iii) **Transparency:** There will be:
 - A clear distinction between direct and apportioned costs;
 - Identification of appropriate cost drivers for each type of activity and the use of objective operational and/or financial data relevant to that cost driver to apportion sums to spectrum management and non-funded functions costs; and
 - Clear links to Ofcom’s corporate plan³³.

Surpluses or Deficits in retention of WTA receipts

- 4.21 Ofcom may, in some circumstances, consider it appropriate to require WTA receipts which have been received in one year be treated as referable to costs incurred in that year and to costs incurred in one or more subsequent years. Ofcom may, in these circumstances, consider it appropriate to estimate the costs likely to be incurred in the forthcoming years and to apportion the WTA receipts received to each year accordingly.
- 4.22 Any annual surplus or deficit in the retention of WTA receipts will be carried forward to the next financial year. Where there is a surplus of WTA receipts from the previous year, it may not be necessary for Ofcom to retain additional WTA receipts until that surplus has been used. Where there is a deficit, however, Ofcom may need to retain additional WTA receipts from the first (and, where appropriate, subsequent) months of the next financial year in order to ensure that its spectrum management and non-funded functions costs do not exceed its income received from WTA receipts.
- 4.23 Ofcom will prepare an account for each financial year showing the aggregate amount of the WTA receipts that it has retained in accordance with this Statement³⁴.
- 4.24 Ofcom is satisfied that the amount of WTA receipts which may be retained in accordance with this Statement is objectively justifiable and proportionate to the estimate of spectrum management and non-funded functions costs which it is practicable for Ofcom to make, on the basis that:
- i) In identifying the costs for which Ofcom may retain WTA receipts, it has deliberately focused its attention on those areas where its activities are currently funded by grant in aid, namely spectrum management and its non-funded functions costs;

³³ Ofcom’s corporate plans can be found on its website here: <https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans>

³⁴ In accordance with section 400(4) of the Communications Act 2003.

- ii) Ofcom's approach to estimating its spectrum management and non-funded functions costs will be based on its existing methodology and principles for determining costs, as set out in its Statement of Charging Principles;
- iii) Ofcom's estimates of its spectrum management and non-funded functions costs will be kept under review from month to month, where the amount of WTA receipts which are retained will be adjusted to ensure that Ofcom does not retain more WTA receipts than is necessary;
- iv) Ofcom has put in place appropriate arrangements to ensure that any WTA receipts which are not retained will be paid into the government's Consolidated Fund in a timely and accurate way, and that such arrangements will be subject to appropriate audit procedures at regular intervals; and
- v) In making provision for the retention of WTA receipts under this Statement, Ofcom is committed to having due regard to the principles set out in the Framework Document and, to the principles set out in Managing Public Money and PSIAS.

A1. Sections 400-401 of the Communications Act 2003

400 Destination of licence fees and penalties

- A1.1 This section applies (subject to section 401) to the following amounts--
- a) an amount paid to OFCOM in respect of a penalty imposed by them under Chapter 1 of Part 2 (including a penalty imposed by virtue of section 191(5));
 - b) so much of an amount paid to OFCOM under numbering conditions in respect of an allocation of telephone numbers as is an amount determined by reference to an indication given in response to an invitation such as is mentioned in section 58(5)(a);
 - c) an amount paid to OFCOM in pursuance of an obligation imposed by or under [Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006];
 - d) an amount paid to OFCOM in respect of a penalty imposed by them under [section 42 [or 43A] of that Act];
 - e) a cash bid amount paid to OFCOM under a Broadcasting Act licence for the first year falling within the period for which the licence is in force;
 - f) an amount paid to OFCOM under such a licence for a subsequent year as the amount equal to a cash bid amount increased by the appropriate percentage;
 - g) an amount paid to OFCOM under such a licence as an amount representing a percentage of relevant revenue for an accounting period;
 - h) an amount paid to OFCOM in respect of a penalty imposed by them under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or Part 3 of this Act;
 - i) an amount paid to OFCOM in respect of a penalty imposed by them under Part 3 of the Postal Services Act 2011].
- A1.2 Where OFCOM receive an amount to which this section applies, it must be paid into the appropriate Consolidated Fund; but this subsection does not apply to an amount which is required by OFCOM for making an adjustment in respect of an overpayment.
- A1.3 The reference in subsection (2) to the payment of an amount into the appropriate Consolidated Fund--
- a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
 - b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and

c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.

A1.4 OFCOM must, in respect of each financial year, prepare an account showing--

- a) the amounts to which this section applies that have been received by them during that year;
- b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under this section in respect of those amounts;
- c) the aggregate amount of the sums received by them during that year that is retained in accordance with a statement under section 401 for meeting the costs set out in the statement in accordance with subsection (1)(b) of that section during that year;
- d) the aggregate amount that they estimate will fall to be so retained out of amounts due to them and likely to be paid or recovered; and
- e) the cost to OFCOM of carrying out during that year the functions in respect of which amounts are or are to be retained in accordance with such a statement.

A1.5 OFCOM must send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates.

A1.6 The Comptroller and Auditor General must examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

A1.7 References in this section to penalties imposed by OFCOM under Part 3 of this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3).

A1.8 In this section--

"the appropriate percentage" has the same meaning as in section 19 of the 1990 Act;

"cash bid amount" means an amount specified in a cash bid for a Broadcasting Act licence or the amount determined by OFCOM for the purposes of any provision of the 1990 Act or this Part to be what would have been the amount of a cash bid for a licence;

"financial year" has the same meaning as in the Schedule to the Office of Communications Act 2002 (c 11);

"numbering conditions" means conditions the setting of which is authorised by section 58 or 59; and

"relevant revenue" means any of the following--

- a) the amount which for the purposes of section 19, 52(1), 102(1) or 118 (1) of the 1990 Act is the amount of qualifying revenue for an accounting period;
- b) the amount which for the purposes of section 13(1) or 55(1) of the 1996 Act is the amount of multiplex revenue for an accounting period; or
- c) an amount which for the purposes of paragraph 7 of Schedule 10 to this Act is the amount of qualifying revenue for an accounting period.

A2. 401 Retention by OFCOM of amounts paid under the Wireless Telegraphy Act 2006

A2.1 OFCOM have power to make a statement setting out:

- a) the principles under which they may retain any or all of the amounts paid to them –
 - i) in pursuance of obligations imposed by or under Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006;
 - ii) in respect of fees charged under section 53D of that Act,

and

- b) the costs in respect of which the amounts may be retained (which may include costs other than those incurred in the exercise of their functions under those provisions).

A2.2 Where such a statement authorises the retention of an amount, OFCOM are not required to pay it into the appropriate Consolidated Fund in accordance with section 400.

A2.3 The provision contained in a statement made by OFCOM under this section must be such as appears to them likely to secure, on the basis of such estimates of the likely costs as it is practicable to make, that the amounts retained by OFCOM are objectively justifiable and proportionate to the costs in respect of which they are retained.

A2.4

A2.5

A2.6 A statement under this section may include provision which, for the purposes of the statement and of the preparation of accounts in accordance with section 400(4), requires an amount actually received in one year:

- a) to be treated as referable to costs incurred in that year and in one or more subsequent years; and
- b) to be brought into account, in each of those years, in accordance with an apportionment for which provision is made in the statement.

A2.7 A deficit or surplus shown (after applying this subsection for all previous years) by an account prepared under section 400(4) is to be carried forward and taken into account in determining what is required by OFCOM in relation to the following year for meeting the costs set out in the statement in accordance with subsection (1)(b).

A2.8 A statement under this section:

- a) if it is expressed to apply for a limited period, does not apply to any amounts paid to OFCOM after the end of that period; and
- b) in any event, does not apply to amounts paid to them after a withdrawal of the statement takes effect.

- A2.9 OFCOM may revise a statement made under this section.
- A2.10 The consent of the Treasury and the Secretary of State is required for the making, revision or withdrawal of a statement under this section.
- A2.11 Where OFCOM make or revise a statement of this section they must publish so much of the statement or revised statement as appears to them necessary for demonstrating that the statement or revision complies with subsection (3).