



HM Revenue
& Customs

HMRC Penalties: a Discussion Document

Publication date: 2 February 2015

Closing date for comments: 11 May 2015

Subject of this discussion:	How we change the way that penalties are applied as we transform HMRC to deliver more digital services, based around our customers, so they can get things right first time.
Scope of this discussion:	We're asking for comments on the high-level issues raised by this document and will ask for further, more detailed feedback as the work progresses.
Who should read this:	Taxpayers, tax credit claimants, agents and representative bodies.
Duration:	Discussion starts 2 February and ends 11 May 2015.
Lead official:	Paul Miller, HMRC.
How to respond or enquire about this discussion:	Please send email responses to TAP@hmrc.gsi.gov.uk . Please send written responses to HMRC, Tax Administration Policy, Room 1C/06, 100 Parliament Street, London SW1A 2BQ.
Additional ways to be involved:	If you're interested in discussing the current work at a meeting, please send an email to TAP@hmrc.gsi.gov.uk . More in-depth discussions will take place as the work progresses to the next stage of consultation.
After the discussion:	We'll publish a summary of the feedback and use it in developing our approach further.
Getting to this stage:	This is the first broad discussion concerning penalties generally since the consultation undertaken as part of the Review of HMRC Powers. More information about this review can be found on page 7.
Previous engagement:	We've not consulted with our stakeholders before about this latest work.

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On request, this document can be produced in Welsh and alternate formats, including large print, audio and Braille format.

1. Introduction

1.1. As HMRC reviews and improves how we serve our customers, we are also exploring the way that we currently apply penalties when people fail to meet their tax or entitlement obligations. We know that the vast majority of customers meet their obligations in full and on time, and that penalties are only applied to a small minority of people and businesses. We want to make sure our approach works as well as possible. This is why we want to consider whether we could better differentiate between deliberate and persistent non-compliers and those who might make an occasional error for whom alternative interventions are more appropriate.

A modern tax system

1.2. We aim to be an effective, efficient and impartial tax and payments authority. We help the honest majority to get their tax right and make it hard for the dishonest minority to cheat the system.

1.3. Part of helping the honest majority involves delivering on the Government's commitment to make the UK tax system as user-friendly and efficient as possible, which also means making tax policy simpler and easier for people to understand.

1.4. To do this, we are improving how we work, introducing new digital services that make it easier for customers to get things right first time. We will put customers at the heart of everything we do by moving away from services that are based around traditional tax regimes to services designed around our customers.

Digital services

1.5. Our digital plans will transform the way we operate and serve our customers. One example of how we plan to do this involves a personalised tax account for customers, so we can help make it simpler, quicker and easier for them to pay the right tax at the right time.

1.6. Our digital services¹ for our customers will:

- be easy to use, convenient and personalised for individuals, businesses and agents
- promote digital take-up and voluntary compliance by designing for customer needs
- use data to help customers avoid errors through pre-population
- provide assistance in using or accessing our services for those who need it
- allow us to consult our customers on policy proposals and changes so that we can improve them.

¹ <https://www.gov.uk/government/publications/hmrc-digital-strategy-2014/hmrc-digital-strategy-2014>

Compliance

1.7. Improving our services means changing the way we think about compliance. New technology will enable us to deal with the vast majority of compliant customers – and those who try and bend or break the rules – by using more accurate, up-to-date data that gives us a more ‘real time’ view of a customer’s tax and benefits affairs. By introducing services that make it easy for customers to get things right, we will reduce the risk of errors – saving them and us time and money.

1.8. Our digital services will also give us access to more and better data about our customers, which will enhance further our compliance activities. We will be able to look at a customer record across all our tax regimes and previous tax periods, providing us with an insight into whether that individual or business poses a tax risk. This more targeted approach means we can then focus our compliance activity and expertise on those determined to bend or break the rules.

Penalties

1.9. Penalties are applied to encourage taxpayers to comply with their obligations, to act as a sanction for those who don’t and to reassure the compliant majority that they will not be disadvantaged by those who don’t play by the rules. We don’t use penalties as a way of raising revenue, or to offset our running costs. In essence, we want compliance, not penalties.

Aim of this discussion

1.10. It’s important that we design tax policy for a modern, digital world and make the most of the opportunities this technology provides. As we change the way in which we operate, we believe we will need to change the way in which we apply penalties. This discussion document looks at how we might be able to do this. We want feedback from individuals and businesses so it can influence our thinking at this early stage.

2. Our approach to compliance

HMRC's compliance strategy

2.1. Our compliance strategy is based on three basic principles: Promote, Prevent and Respond. It's designed to make it easier for our customers to get things right first time, rather than chasing them to meet their tax and payments obligations after they have dealt with us.

2.2. We will **promote** good compliance by designing it into systems and processes.

Promote is about ensuring customers have the information they need to get their tax and entitlements right first time; that they clearly understand their obligations and risks they face through non-compliance; designing out careless errors; looking for risk; and giving active help to customers to meet their obligations.

2.3. We will **prevent** non-compliance at or near the time of registration, filing or seeking repayment by stopping mistakes and personalising returns.

Prevent is about exploiting our digital channels and using what we know about customers to identify risks as they arise and intervening to give customers the opportunity to correct their mistakes (in registration or filing) when they transact with HMRC, and before we make payments or repayments.

2.4. We will **respond** to address any risks and non-compliant behaviours that have not already been resolved through our upstream promote and prevent activities.

Respond is about tailoring our enforcement and compliance activities and interventions to address specific customer behaviours and compliance risks. We will use technology where we can to automate tasks and to support the successful investigation of non-compliant behaviours. Our activities will be more personalised as a result of our increased ability to analyse customer information.

2.5. This three-pronged approach is underpinned by our ability to analyse the increasing amount of digital information and data that is available to us. It will also help more customers to correct errors and use our services themselves, rather than having to resort to more traditional methods of contact, such as calling us or sending us letters.

3. The role of penalties

3.1. Penalties are applied where customers fail to meet their obligations. There are many different penalties, but they break down into three broad areas:

- penalties for failing to meet a time-bound obligation, such as submitting a return or making a payment by a specified deadline. Such penalties are generally automated
- penalties for failing to meet a regulatory obligation such as notifying taxable status or not complying with a regulatory regime, for instance by handling goods subject to unpaid excise duty
- behavioural-based penalties for submitting inaccurate returns and documents.

3.2. Other penalties exist that fall outside these groups, including penalties for failure to keep certain records, or those that are specific to particular taxes and systems. More detail can be found in Annex A.

3.3. Penalties have a role to play in supporting the **promote** and **respond** aspects of our approach to compliance:

- In **promote**, penalties have a role to play in influencing customer behaviour, encouraging voluntary compliance and discouraging non-compliance.
- In **respond**, penalties impose additional costs or restrictions on customers, emphasising that non-compliance does not pay.

3.4. The effectiveness of penalties depends on the way they are designed and applied. Many of our penalties were most recently changed during the HMRC Powers Review, which ran from 2005 to 2012.

HMRC Powers Review

3.5. The review took place after HMRC was formed in 2005 to decide what powers the department should have. It involved significant external consultation.

3.6. The principles that underpinned the Powers Review said penalties should:

Influence behaviour

- Reinforce legal obligations to encouraging compliance
- Deter non-compliance
- Help return people to compliance

Be effective

- Clear, easily understood and accessible to all
- Set in statute
- Simple and cost effective to administer
- Separate from interest
- Applied consistently

Be Fair

- Proportionate
- Customer focused, recognising differences
- Subject to appeal (where they cannot be overturned by taxpayer action)
- Conform with Human Rights legislation

3.7. We think these principles remain largely relevant today, but as we change to more digital ways of working we need to consider how they apply in situations where we have access to a large amount of data. More detail can be found in chapter 5.

4. Concerns about current penalties

4.1. Stakeholders have raised some concerns about how we apply penalties in practice. This chapter explains some of them and sets out why we think we should consider changes.

General issues

Importance of fairness and proportionality

4.2. Where customers believe penalties to be unfair and/or disproportionate, it can have implications for their future compliance. Research suggests this can lead to increased non-compliance – and goes against the **promote** element of our approach to compliance.

Automated penalties

4.3. Automation plays a key role in creating a simple, cost-effective digital tax system. But the large-scale issue of penalties could be counter-productive if it undermines people's natural motivation to comply with what the tax system asks them to do. This is a particular concern in respect of penalties which apply to a large customer base, typically in an automated way. These penalties can be appropriate in certain circumstances, but they tend to be small and so to be more costly and resource intensive for HMRC to pursue than larger better-focused penalties (and cannot be increased in size without then being disproportionate to the failed obligation). They also result in a substantial amount of customer contact for HMRC and so have an impact on the use of HMRC resources.

Particular taxes and duties

Income Tax Self Assessment

4.4. We may not know if any tax is due until a customer submits their return and a penalty for a late-filed return is automatically applied, even if the return states that no further tax is due from the customer. Prior to February 2012, this penalty was cancelled if no tax was owed. But from February 2012 the penalty applied irrespective of whether there was an outstanding amount. Following this change the proportion of on-time filing improved significantly, but it means some customers receive a penalty where there is no tax at risk.

4.5. The current system makes no distinction between a customer who misses a deadline by a day or two and someone who has made no attempt to comply at all. There are 'reasonable excuse' provisions that can remove penalties, but the rules may need updating to better support those genuinely wanting to comply.

VAT default surcharge

4.6. The current system has several safeguards to ensure that we handle any non-compliance proportionately. For example, an initial failure to comply in a 12-month period attracts a warning rather than a penalty. Successive failures then attract stiffer penalties. This approach gives customers an opportunity to recognise, and put right, problems in their filing process, before they risk incurring a large penalty. However, in some cases it can have the opposite effect, so that customers simply ignore the early warnings and fail to act until they receive a large penalty.

4.7. The current system does not differentiate between payments that are a day or two late from payments which are many months late.

Excise regulatory penalties

4.8. Some regulatory failures can lead to very large penalties, because the penalty is fixed as a percentage of the duty. The size of such penalties might be viewed as disproportionate.

Other areas of concern

Behavioural penalties for inaccurate returns and other failures

4.9. These penalties aim to take account of the behaviour of the customer and depend on how they have dealt with us in the time leading up to the inaccuracy or other failure. They seek to distinguish between careless and deliberate behaviours, however we need to ensure these are applied case by case on a consistent basis.

4.10. Many of these penalties were designed at a time when most tax enquiries were undertaken with our customers in person. With new digital ways of working increasingly making it quicker and easier for customers to deal with us online, we want to ensure our system adapts to this new way of working.

Evaluating the impact of previous changes

4.11. The Office of Tax Simplification (OTS) review of penalties² cautiously suggested that the penalties introduced by the HMRC Powers Review are working in line with their objectives. However, the OTS was unable to conclude whether or not those penalties have led to the desired behavioural change, and also wondered whether the system is fully appropriate for the increasingly digitised nature of the tax system.

4.12. The main conclusion by the OTS was that there needs to be a full post-implementation review of the HMRC Powers Review work in respect of penalties. The OTS conclusion fits well with our wish to open a discussion to look again at our penalty regimes.

² <https://www.gov.uk/government/publications/tax-penalties>

Q1: To what extent are the concerns expressed above typical of actual situations?

Q2: What do you consider to be the major areas of concern with our penalty regimes?

Q3: What do you view as being the priority areas for the initial focus of this work?

5. How we might change penalties

5.1. In future, we want to make greater use of behavioural and customer understanding, and use our digital capability to communicate with our customers in a more targeted and individualised way. Our digital delivery will increasingly be based around the whole customer and not based around specific tax regimes. And so we want to consider if our penalties could also be applied in a more sophisticated and customer-focused way.

5.2. We've started to think about how we might update the way in which we administer penalties and some of our early thoughts are below. We would like to hear what our customers and stakeholders think and any other ideas or comments they may have.

The role of penalties

- 5.3. Our current thinking is based around five principles. They are:
1. The penalty regime should be designed from the customer perspective, primarily to encourage compliance and prevent non-compliance. Penalties are not to be applied with the objective of raising revenues
 2. Penalties should be proportionate to the offence and may take into account past behaviour
 3. Penalties must be applied fairly, ensuring that compliant customers are (and are seen to be) in a better position than the non-compliant
 4. Penalties must provide a credible threat. If there is a penalty, we must have the operational capability and capacity to raise it accurately, and if we raise it, we must be able to collect it in a cost-efficient manner
 5. Customers should see a consistent and standardised approach. Variations will be those necessary to take into account customer behaviours and particular taxes.

Possible implications for penalties

- 5.4. We need to consider:
- whether penalties should be applied for an uncharacteristic failure by an otherwise compliant customer
 - our response to those who make a simple mistake when entering a particular tax regime for the first time, or those who need extra help
 - whether a customer's compliance with each of their obligations should be considered separately, or whether penalties should take account of their behaviour as a whole.
- 5.5. One option could be using non-financial sanctions as an alternative to financial penalties. We also want to find a way to reduce or remove the risk of our most vulnerable customers receiving penalties, while still helping them to meet any tax obligations.

5.6. We currently impose a large number of low-value penalties in Income Tax Self Assessment and expect to do the same in the Real Time Information PAYE regime (known as 'RTI'). We want to consider moving to a different model.

5.7. One option could be a progressive system similar to penalty points for motoring offences, so that initial financial penalties are avoided, but more substantial penalties then apply for more serious failures or for persistent non-compliance with obligations. There may be advantages in not initially applying penalties, but the downside might be that customers fail to realise the importance of non-compliant behaviour. The role of our digital communications would then be key in ensuring there are no surprises for customers.

5.8. If a customer has a personalised digital tax account showing all the taxes they need to pay in one place, we may need to move away from applying penalties on a tax-by-tax basis, and towards a penalty system that is based on the overall position of the customer. This might mean there are implications for the role of interest.

5.9. Penalties only arise where customers don't meet the obligations that are set. In the light of our developing approach to compliance and the greater availability of data and digital tools, we'll also need to look closely at some of these obligations.

5.10. Any changes to HMRC's penalty regimes would follow the usual policy development process and need primary and secondary legislative changes. As part of that process, we would follow the tax impact assessment process, and build a good understanding of the possible impact on our customers – businesses and individuals – the Exchequer and HMRC. Also any changes made would need to take account of, and be dependent on, HMRC's developing IT capability.

Q4: Do you agree the principles set out at paragraph 5.3 should govern the design of our penalty regimes? If not what other or additional principles should apply?

Q5: Do you think that an approach which focused more on individual behaviour would help?

Q6: What would be the impact if we were to remove penalties for 'short' failures (a day or two late) and how would we incentivise compliance (would a higher interest rate work for example)?

Q7: What do you think should trigger a penalty?

Q8: Are there incentives HMRC could consider to encourage compliance?

Q9: What could HMRC do better to explain sanctions and the role penalties play within them?

Q10: If we were not to charge penalties in all the circumstances that we do currently, how could we still get a strong message across to our customers which they will take notice of?

Q11: To what extent does the present penalty regime help agents and advisers to influence their clients' compliance, and how might this be different if we were not to charge penalties in all the circumstances that we do currently.

Q12: Do you have any comments on the likely impact of any changes, or can you contribute to our evidence base?

6. Process and Next Steps

This discussion is being conducted in line with the Tax Consultation Framework.

There are five stages to tax policy development:

- Stage 1 Setting out objectives and identifying options
- Stage 2 Determining the best option and developing a framework for implementation, including detailed policy design
- Stage 3 Drafting legislation to effect the proposed change
- Stage 4 Implementing and monitoring the change
- Stage 5 Reviewing and evaluating the change.

This discussion is taking place during stage 1 of the process. The purpose of the discussion is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

A number of questions are posed as the end of chapters 4 and 5.

We would like to hear from organisations or individuals on the points raised by this document, whether in response to the questions posed or otherwise.

Responses should be sent by 11 May, by e-mail to TAP@hmrc.gsi.gov.uk or by post to: Paul Miller, HMRC, Tax Administration Policy, Room 1C/06, 100 Parliament Street, London SW1A 2BQ.

Telephone enquiries should be made to Paul Miller on 03000 586520 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC Inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, among other things, obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This discussion is being run in accordance with the Government's Consultation Principles. The period of discussion runs until 11 May 2015.

If you are interested in attending a meeting at this stage to discuss this work, please send an email to TAP@hmrc.gsi.gov.uk. When this work progresses to the next stage of consultation we will set up meetings to discuss issues in more depth.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the discussion process please contact:

Oliver Toop, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the discussion to this address.

Annex A: Overview of the main penalty regimes

A.1. HMRC has a large number of different penalty regimes, but they break down into three broad areas:

- penalties for failing to meet a time-bound obligation, such as submitting a return or making a payment by a specified deadline. Such penalties are generally automated
- penalties for failing to meet a regulatory obligation such as notifying taxable status or not complying with a regulatory regime, for instance by handling goods subject to unpaid excise duty
- behaviour-based penalties for submitting inaccurate returns and documents.

A.2. There are also penalties specific to taxes and regimes that fall outside these groups.

Penalties for failure to meet time-bound obligations

A.3. The penalties resulting from the Powers Review have the following characteristics:

- A consistent/coherent approach to late filing and late payment penalties across our major taxes
- Different models, based on the same basic principles, depending on the frequency of obligation (e.g. annual, occasional, quarterly, monthly)
- Penalties which apply to discrete obligations – late filing is viewed separately from late payment and from inaccuracies. There is no memory or read-across between regimes (on the basis this would help to maintain clarity of the compliance message to customers, emphasise the importance of each obligation and would result in simplicity of operation)
- A broadly harmonised approach to late filing, with a £100 penalty for the first offence (the Powers Review pointed to the greater ease of understanding for customers with a clear, consistent and easily understood penalty)
- Escalating penalties for continued failure within a regime
- Reasonable excuse provision, so a person will not be liable to a penalty if they had a reasonable excuse for the failure to make a return or payment on time.

A.4. The models were set out in primary legislation with scope to turn them on fully or partially using secondary legislation.

Structure of late-filing penalties applied by the 2009 Finance Act for specific tax regimes

Self Assessment

Time	Penalty	Details
Missed deadline	£100	Automatic late-filing penalty
Three months	+ £10 per day	Maximum of 90 days, ie £900
Six months	+ £300 or 5% of tax	Whichever is greater
12 months	+ £300 or 5% of tax	Whichever is greater A higher 12-month penalty applies where the taxpayer deliberately withholds information. If the withholding of information was deliberate, but not concealed, the penalty is the greater of £300 or 70%. If it was deliberate and concealed, the penalty is the greater of £300 and 100%. These penalties are higher if the information concerns certain offshore matters. Reductions are possible to the higher 12-month penalties for disclosure from the taxpayer.

Construction Industry Scheme

Time	Penalty	Details
Missed deadline	£100	Automatic late-filing penalty
Two months	+ £200	Automatic late-filing penalty
Six months	+ £300 or 5% of tax	Whichever is greater
12 months	+ £300 or 5% of tax	Whichever is greater A higher 12-month penalty applies where the taxpayer deliberately withholds information. If the withholding of information was deliberate, but not concealed, the penalty is the greater of £1,500 or 70%. If it was deliberate and concealed, the penalty is the greater of £3,000 and 100%. Reductions are possible to the higher 12-month penalties for disclosure from the taxpayer.

Real Time Information for PAYE

A.5. Phase in dates for the new late filing penalties for PAYE RTI returns are:

- from 6 October 2014 for employers with 50 or more employees
- from 6 March 2015 for employers with fewer than 50 employees.

A.6. A penalty is payable if during a tax month an employer fails to file one or more RTI returns by the filing date. The amount of penalty depends on the number of employees in the PAYE scheme.

Number of employees	Amount of penalty
From 1 to 9	£100
From 10 to 49	£200
From 50 to 249	£300
250 or more	£400

A.7. A further penalty may be payable if the failure to make a return continues beyond the period of three months beginning with the date after the filing date. The further penalty is 5% of the liability to make payments (i.e. the total tax and Class 1 NIC) which would have been shown on the return. There are no reductions for the type and quality of disclosure.

A.8. For each tax year an employer will not be charged a penalty for the first tax month during which they fail to file one or more returns on time. However, this exemption does not apply to employers who operate an annual PAYE scheme and are only required to file one return per year.

A.9. Where the late filing model in Finance Act 2009 does not yet apply each regime has its own penalties attaching to late filing of returns.

Corporation Tax

A.10. Late filing of a corporation tax return attracts penalties under paragraphs 17 & 18 of Schedule 18 to the Finance Act 1998.

Time	Penalty	Details
Missed deadline	£100	These amounts are increased to £500 and £1,000 where a company files late for the third consecutive accounting period.
Three months	+ £200	
18 months of the end of the accounting period	10% of the unpaid tax if the return is delivered within two years after the end of the accounting period 20% of the unpaid tax in any other case	

VAT Default Surcharge

A.11. Default Surcharge is a combined late-return and late-payment sanction. It is an automated system of escalating surcharges based on the number of occasions a business defaults during a rolling 12-month period, by failing to pay the full amount of VAT, shown on a return, by the due date.

A.12. A warning notice is issued after the first late payment, with the escalating surcharge rates shown in the table below. Rate escalation is geared to late payment only (rather than a late return). Each default (late return or payment) extends the 12 months period.

Number of defaults (late payment or late return) during the rolling 12 month period	Surcharge if turnover is less than £150,000	Surcharge if turnover is £150,000 or more
1st	No surcharge but if you default within 12 months you enter a surcharge period	No surcharge but you enter a surcharge period
2nd	No surcharge but you enter a surcharge period	2% (or no surcharge if it's less than £400)
3rd	2% (or no surcharge if it's less than £400)	5% (or no surcharge if it's less than £400)
4th	5% (or no surcharge if it's less than £400)	10% or £30 (whichever is more)
5th	10% or £30 (whichever is more)	15% or £30 (whichever is more)
6 or more	15% or £30 (whichever is more)	15% or £30 (whichever is more)

A.13. Reasonable excuse provisions apply but there is no mitigation.

Structure of late payment penalties applied by the 2009 Finance Act for specific tax regimes

Self Assessment

Late payment	Penalty percentage of tax due
30 days late	5%
6 months late	5% of tax due at that date
12 months late	5% of tax due at that date

PAYE and Construction Industry Scheme

A.14. Tax is generally due for payment monthly under the Construction Industry Scheme and PAYE and the following penalty model applies to these two regimes:

The first default (failure to pay on time) in a tax year does not count as a default and does not attract a penalty	
Number of defaults in a tax year	Penalty percentage applied to the amount of tax comprising the default(s)
1-3	1%
4-6	2%
7-9	3%
10 or more	4%

A.15. If any amount is unpaid at the six or 12 month points a further penalty of 5% of the unpaid amount arises.

Other late-filing and late-payment penalties

A.16. The legislation (in Schedules 55 and 56 of Finance Act 2009) only becomes effective upon the making of secondary legislation, known as an 'Appointed Day Order'.

A.17. To date, our implementation of the late-filing and late-payment penalty regimes is as set out below.

Regime	Schedule 55 (filing)	Schedule 56 (payment)
<i>Already in force</i>		
PAYE, comprising: Income Tax National Insurance Contributions Student Loans	Amendment for Real Time Information (RTI); included in Finance Act 2013 and to be switched on in stages, starting with large employers on 6 October 2014.	6 April 2010
Bank Payroll Tax	31 August 2010	31 August 2010
Pension scheme returns	1 April 2010	1 April 2011
ITSA, comprising: Income Tax Student Loans Class 4 NICs	6 April 2011	6 April 2011
Construction Industry Scheme	6 October 2011	6 April 2010
Machine Games Duty	1 February 2013	1 February 2013
Small charities Gift Aid schemes	April 2013	April 2013

Annual Tax on Enveloped Dwellings	17 July 2013	17 July 2013
<i>Proposed</i>		
Stamp Duty Reserve Tax	1 January 2015	1 January 2015

Penalties for failure to meet regulatory obligations.

A.18. There is a wide array of regulatory obligations and penalties for failure, many of which are applied rarely.

Penalties for failing to comply with Information and Inspection and Data-gathering powers

A.19. HMRC officer's information and inspection powers are set out in Schedule 36 of Finance Act 2008 and data-gathering powers are set out in Schedule 23 of Finance Act 2011. The tables below outline the various failures that can occur and the penalties that are charged for them.

Schedule 36 penalties

Failure	Amount of penalty.
Not complying with an information notice within the time laid down by the officer	£300 fixed.
Still not complying with an information notice after being charged the £300 penalty	up to £60 per day while the failure continues.
Where the notice is an identity unknown notice under para 5 and the failure after the £300 penalty continues for more than 30 days	HMRC may ask the First tier tribunal for permission to impose an increased daily penalty of up to £1,000 per day
Not complying with an information notice after being charged the £300 penalty, where the officer has reason to believe the tax not paid as a result is significant.	A tax related penalty of an amount decided by the Upper Tribunal
Concealing, destroying, disposing, or arranging for same, of documents required to be produced by an information notice	£300 fixed.
Deliberately obstructing an inspection approved by the tribunal	£300 fixed.
Still deliberately obstructing an inspection approved by the tribunal after being charged the £300 penalty	up to £60 per day while the obstruction continues.
Carelessly or deliberately providing inaccurate information when complying with an information notice	not exceeding £3,000 for each inaccuracy.

Schedule 23 penalties

Failure	Amount of penalty.
Not complying with a data-holder notice within the time laid down by the officer.	£300 fixed.
Still not complying with a data-holder notice after being charged the £300 penalty.	up to £60 per day while the failure continues.
Where the failure to comply with the data-holder notice continues after the £300 penalty for more than 30 days.	HMRC may ask the First tier tribunal for permission to impose an increased daily penalty of up to £1,000 per day.
Concealing, destroying, disposing, or arranging for same, of documents required to be produced by a data-holder notice.	£300 fixed.
Carelessly or deliberately providing inaccurate information when complying with a data-holder notice.	not exceeding £3,000

Penalties for inaccurate returns (Schedule 24 of Finance Act 2007)

A.20. The penalties for inaccuracy are designed with the general objectives of simplification and alignment, replacing a range of very different penalties in the predecessor departments, and targeting more effectively on taxpayer behaviour.

A.21. The aim is to influence taxpayer behaviour positively, reflecting HMRC's strategic objectives by supporting those who seek to comply, while coming down hard on the deliberately non-compliant. Such penalties aim to deter poor behaviour and provide reassurance to those who comply that they will not be disadvantaged by those who do not comply.

A.22. The regime:

- discourages deliberate inaccuracies by imposing higher penalties on them
- reserves the highest penalties for deliberate and concealed inaccuracies
- encourages customers to report errors they make by discounting penalties for disclosure
- encourages customers to contact HMRC as soon as possible by further discounting penalties for disclosure unprompted by any HMRC action
- gives incentive to correct system failures by allowing certain penalties to be suspended.

A.23. Detailed policy concerning specific aspects of the regime is designed in accordance with these principles.

Degrees of culpability

A.24. There are three types of behaviour which, if leading to inaccuracy, can result in a penalty:

- careless
- deliberate, but not concealed
- deliberate and concealed.

A.25. Inaccuracy penalties are usually applied only as part of a compliance intervention. The size of the penalty is determined by the amount of tax understated, the behaviour leading to the inaccuracy, and the nature and quality of any disclosure made by the taxpayer to HMRC. If the taxpayer takes reasonable care to avoid an inaccuracy, there is no penalty.

Behaviour	Penalty max (%)	Penalty min (%) – prompted disclosure	Penalty min (%) – unprompted disclosure
Careless	30	15	0
Deliberate	70	35	20
Deliberate and concealed	100	50	30

A.26. The penalty rates are increased by a factor of either 1.5 or 2 for certain offshore matters.

A.27. If an inaccuracy is caused by carelessness, the penalty can be suspended if conditions can be agreed to prevent a similar inaccuracy occurring in future. If, at the end of the suspension period, the conditions have been met, the penalty is cancelled; otherwise, it is released for charge.

Penalties for failure to notify and certain VAT and excise wrongdoing (Schedule 41 of Finance Act 2008)

A.28. The penalties for failure to notify are designed with the general objectives of simplification and alignment, replacing a range of very different penalties in the predecessor departments, and targeting more effectively on taxpayer behaviour.

A.29. The aim is to influence taxpayer behaviour positively, reflecting HMRC's strategic objectives by supporting those who seek to comply, while coming down hard on the deliberately non-compliant. Such penalties aim to deter poor behaviour and provide reassurance to those who comply that they will not be disadvantaged by those who do not comply.

A.30. The regime:

- discourages deliberate failures by imposing higher penalties on them
- reserves the highest penalties for deliberate and concealed failures
- encourages customers to report failures by discounting penalties for disclosure
- encourages customers to contact HMRC as soon as possible by further discounting penalties for disclosure unprompted by any HMRC action. For example, if a person makes a full unprompted disclosure of a non-deliberate

failure to notify within 12 months after tax first becomes unpaid, there is no penalty.

A.31. Detailed policy concerning specific aspects of the regime is designed in accordance with these principles.

Degrees of culpability

A.32. There are three types of behaviour which, if leading to inaccuracy, can result in a penalty:

- not deliberate
- deliberate, but not concealed
- deliberate and concealed.

A.33. A single penalty system applies to almost all taxes, duties and levies administered by HMRC for those who fail to register or notify HMRC of a new taxable activity, including late VAT registration.

A.34. In addition, there are specific wrongdoing penalties where a person:

- issues an invoice that includes VAT which they are not entitled to charge
- uses a product in a way that means more excise duty should have been paid
- supplies a product at a lower rate of excise duty, knowing that it will be used in a way that means a higher rate of excise duty should be paid
- handles goods on which excise duty has not been paid or deferred.

Behaviour	Penalty max (%)	Penalty min (%) – prompted disclosure	Penalty min (%) – unprompted disclosure
Not deliberate	30	20*	10**
Deliberate	70	35	20
Deliberate and concealed	100	50	30

* For failure to notify, reduced to 10% if the failure is brought to HMRC’s attention within 12 months.

** For failure to notify, reduced to 0% if the failure is brought to HMRC’s attention within 12 months.

A.35. There is no penalty if HMRC or a tribunal accept that the taxpayer has a reasonable excuse for the failure.

Other penalty regimes

A.36. The following are examples of penalty regimes which were not considered by the Powers Review and remain in force.

Late filing of Class 1A NIC returns

A.37. A penalty of £100 per month or part month for each batch or part batch of 50 earners whose particulars of Class 1A NIC payable should have been included in the return. A penalty is payable for each month of failure for a maximum of 12 months.

A.38. If the failure continues beyond 12 months a further penalty is payable. The penalty is an amount not exceeding the Class IA NIC which remained unpaid after the due date.

A.39. The penalties are payable under Regulation 81(2) of the Social security (Contributions) regulations 2001.

Section 98 of Taxes Management Act 1970

A.40. Section 98 of the Taxes Management Act 1970 provides for penalties for offences which do not have their own penalty provisions. Among other things it provides for penalties for:

- failure to deliver returns or documents
- failure to furnish any particulars, documents or information
- fraudulently or negligently furnishing, giving, producing or making any incorrect information.

A.41. The following are examples of failed obligations for which Section 98 applies:

- employers' obligation to provide an annual return of other earnings (Forms P11D and P9D)
- contractors in the Construction Industry obligation to provide subcontractors with written information of payment and deductions made
- obligation for contractors to include declarations that they have verified the payment status of subcontractors they have paid, and that they have considered their employment status to make sure payments have not been made under contracts of employment.