HM Revenue & Customs

Securing compliance with real time information: penalties

Who is likely to be affected?

All employers (including pension providers and secondary contributors) operating Pay As You Earn (PAYE) who are required to make returns under real time information (RTI).

General description of the measure

This measure will introduce new penalties for RTI designed to encourage compliance with the information and payment obligations, whilst ensuring those who do not comply do not gain a significant advantage. The measure includes new late filing penalties for RTI returns, changes to the current late payment penalties to ensure they can be charged in-year, and to the inaccuracy penalties so they can be charged in a way that minimises the burden on employers and HM Revenue & Customs (HMRC).

This note should be read in conjunction with the RTI tax information and impact note (TIIN) which can be found on the HMRC website.

Policy objective

RTI requires employers operating PAYE to report information on employees' pay and deductions in real time. This will improve the quality of the PAYE information received by HMRC and so will, over time, bring benefits to employers, employees and HMRC. This data will be shared with the Department for Work & Pensions (DWP), allowing it to adjust Universal Credit payments in real time and contribute to the Government's objective of making work pay.

RTI is being designed to integrate with payroll processes, so making it as easy as possible for employers to meet their new obligation to tell HMRC about payments they make to their employees on or before the date the payments are made. Employers will continue to pay over to HMRC the sums deducted from their employees under the PAYE system monthly or quarterly. As with penalties across all tax regimes, these penalties are designed to encourage employers to comply with their legal obligations.

The RTI penalties build on existing models to ensure penalties are comparable across taxes and taxpayers, whilst taking account of the specific requirements of RTI. These models are designed to deliver fair, proportionate and effective penalties that deter non-compliance but do not create needless burdens for either employers or HMRC.

Background to the measure

This measure was announced at Budget 2012 and was subject to formal consultation for 12 weeks ending 6 September 2012.

A summary of responses was published on 11 December 2012.

Detailed proposal

Operative date

The new late filing penalties and most of the changes to the late payment penalties will apply on and after 6 April 2014. One change to the late payment penalties and the changes to the inaccuracy penalties will have effect from the date when Finance Bill 2013 receives Royal Assent.

Current law

The current late filing penalties for PAYE are at section 98A Taxes Management Act 1970.

Late filing of an Employer Annual Return (P35 and P14s) attracts a penalty of £100 for each month or part month a return is late, and where the employer (PAYE scheme) has more than 50 employees the penalty rises by £100 for each batch, or part batch, of 50 employees. If the return is still outstanding at 12 months, then a further penalty not exceeding the amount due for the year but unpaid at 19 April can be applied.

The current law for PAYE late payment penalties is at section 107 and Schedule 56 to Finance Act 2009.

Under this model the employer's first failure to pay on time in a tax year does not count as a default so does not attract a penalty; 1,2 or 3 defaults during the tax year attract a penalty of 1 per cent of the amount of tax comprising those defaults; 4, 5 or 6 defaults attract a penalty of 2 per cent; 7, 8 or 9 defaults attract a penalty of 3 per cent; and 10 or more defaults attract a penalty of 4 per cent. If any amount is unpaid at the 6 or 12 month points a further penalty of 5 per cent of the unpaid amount arises.

The law for penalties for submitting inaccurate information is at section 97 and Schedule 24 to Finance Act 2007.

This requires HMRC to charge penalties for careless or deliberate inaccuracies on returns and other documents. The size of the penalty is determined by the amount of tax understated or overclaimed, the behaviour that led to the inaccuracy, and the nature and extent of any disclosure made by the taxpayer. Penalties assessed under Schedule 24 must refer to the tax period to which they relate.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to set out a new model for late filing penalties for RTI. Penalties will apply to each PAYE scheme, with the size of the penalty based on the number of employees in the scheme so that different-sized penalties will apply to micro, small, medium and large employers. Filing defaults will apply each month and will depend on returns not being received. There will be one unpenalised default each year, with all subsequent defaults attracting a penalty. Penalties will be charged quarterly, and subject to the usual reasonable excuse and appeal provisions. The late filing penalty model includes an additional tax-geared penalty to apply, in appropriate cases, where a return is outstanding for three months or more. Regulations will be used to set the penalty rates, including any escalation in size for subsequent defaults.

Legislation will make the changes to the late payment penalty model to ensure it works effectively for RTI. The main changes will ensure penalties are based on the number of late payments relating to each tax year; ring-fence each penalty so that if further defaults arise earlier penalties do not have to be recalculated; and permit a penalty to be amended once it has been issued, rather than it having to be withdrawn and reissued. The Government may use regulations to apply a relief from late payment penalties if the sums paid by the employer do not exactly match the figures shown as deducted on the RTI returns for the relevant period.

Legislation will amend the inaccuracy penalties. The assessment provision will be amended to allow a tax year to be treated as a tax period for the purposes of Schedule 24 to Finance Act 2007. This change will reduce the number of separate penalty assessments that have to be issued where errors are found.

Summary of impacts

<table>
<tr><td rowspan="3">Exchequer impact (£m)</td><td>2012-13</td><td>2013-14</td><td>2014-15</td><td>2015-16</td><td>2016-17</td><td>2017-18</td></tr>
<tr><td>-</td><td>nil</td><td>nil</td><td>nil</td><td>nil</td><td>nil</td></tr>
<tr><td colspan="6">This measure is not expected to have an Exchequer impact.</td></tr>
<tr><td>Economic impact</td><td colspan="6">The measure is not expected to have any significant economic impacts.</td></tr>
<tr><td>Impact on individuals and households</td><td colspan="6">This measure will not directly impact individual employees; the late filing penalties are designed to encourage employers to provide timely information to HMRC. This information will then be used by DWP to support the operation of Universal Credit.</td></tr>
<tr><td>Equalities impacts</td><td colspan="6">Penalties are only applicable where there has been a failure to comply with legal obligations. The impact of the RTI obligations along with plans to mitigate the effects on protected equality groups have been published separately in the overarching RTI TIIN.

It is possible that certain employers will find it more difficult to comply with the RTI filing obligation than others. In particular, some care and support employers (who are likely to be disabled and/or elderly) may be unable to file electronically. RTI includes the option of monthly paper filing for this group.

The late filing and late payment penalty models both include an initial unpenalised default. The late filing penalty model includes smaller penalties for small employers, and applies only one penalty each month regardless of the number of returns due. Late payment penalties are based on the size of the late payment. These features should mitigate the impact of the penalties on smaller employers who pay their employees more frequently than monthly. In addition all employers can appeal against a penalty, and if they have a reasonable excuse for not meeting an obligation the associated penalty will be cancelled.

The Government is also looking to support people online through the RTI communications programme. Many care and support employers may well be among those who opt to use the online system and therefore it will be no more burdensome for them to operate RTI than for other employers.

The Government will continue to look at how best it can help the digitally excluded comply with RTI and have set up a working group with external representatives to consider these matters in more detail.

There are no impacts on other protected equality groups.</td></tr>
<tr><td>Impact on business including civil society organisations</td><td colspan="6">This measure should have no impact on compliant employers or civil society organisations as penalties only affect those who fail to comply with their legal obligations.

HMRC expect all employers to pay their tax in full and on time. However, we are aware that some employers currently use their PAYE deductions to ease their cashflow, paying over less than they should each month or quarter and making up the difference before the end of the tax year. If these employers wish to avoid late payment penalties under RTI they will need to pay over the full amount deducted each month on time. Therefore this measure may have an impact on the cashflow of some employers.</td></tr>
</table>

Operational impact (£m) (HMRC or other)	There will be implementation and IT costs for HMRC with the new late filing penalty regime and updated late payment and error penalties for RTI. In making these proposals the Government has been mindful of the impact on both external customers and HMRC resources. When the final design is agreed, further work will be done, using HMRC's analysts' predictions of workloads and volumes, to quantify the operational impact.
Other impacts	Small firms impact test: The impact on small employers has been considered as part of the policy development process. Following consultation a late filing penalty model has been designed that includes: • a lower penalty for small employers; • an initial unpenalised default for all employers irrespective of size; and, • a system that only assesses one late filing penalty each month regardless of how many returns an employer needs to file. These features should particularly assist weekly payers and so help keep any late filing penalties proportionate for small employers. Other impacts have been considered and none have been identified.

Monitoring and evaluation

This measure will be monitored and assessed as part of the wider evaluation of the RTI programme.

Further advice

If you have any questions about this note please contact Stephanie Allistone on 020 7147 2394 for late filing and late payment penalties, and Pete Woodham on 020 7147 2573 for inaccuracy penalties (email : TAP@hmrc.gsi.gov.uk).

1 Penalties: late filing, late payment and errors

(1) Schedule 1 contains provision for, and in connection with, penalties for late filing, late payment and errors.

(2) The amendments made by paragraph 1 of Schedule 1 have effect in relation to any assessment of a penalty under Schedule 24 to the FA 2007 made on or after the day on which this Act is passed.

(3) Subject to subsection (4), the amendments made by paragraphs 2 to 15 of Schedule 1 have effect for the tax year 2014-15 and subsequent tax years.

(4) The amendments made by paragraph 12 of Schedule 1 have effect on and after the day on which this Act is passed.

SCHEDULE 1

Section 1

PENALTIES: LATE FILING, LATE PAYMENT AND ERRORS

Amendments to Schedule 24 to FA 2007: penalties for errors

1 (1) In Schedule 24 to the FA 2007 (penalties for errors), paragraph 13 (procedure: assessment) is amended as follows.

(2) In sub-paragraph (1)(c), after "assessed" insert "(subject to sub-paragraph (1ZB))".

(3) After sub-paragraph (1) insert—

"(1ZA) Sub-paragraph (1ZB) applies where—

(a) a person is at any time liable for two or more penalties relating to PAYE returns, or for two or more penalties relating to CIS returns, and

(b) the penalties ("the relevant penalties") are assessed in respect of more than one tax period ("the relevant tax periods").

(1ZB) A notice under sub-paragraph (1) in respect of any of the relevant penalties may, instead of stating the tax period in respect of which the penalty is assessed, state the tax year or the part of a tax year to which the penalty relates.

(1ZC) For that purpose, a relevant penalty relates to the tax year or the part of a tax year in which the relevant tax periods fall.

(1ZD) For the purposes of sub-paragraph (1ZA)—

"a PAYE return" means a return for the purposes of PAYE regulations;

"a CIS return" means a return for the purposes of regulations under section 70(1)(a) of FA 2004 in connection with deductions on account of tax under the Construction Industry Scheme."

Amendments to Schedule 55 to FA 2009: penalty for failure to make returns

2 Schedule 55 (penalty for failure to make returns etc) to FA 2009 is amended in accordance with paragraphs 3 to 9.

3 In paragraph 1 (returns etc in respect of which penalties are to be paid under that Schedule)—

(a) in the definition of "penalty date" in sub-paragraph (4), after "document" insert "falling within any of items 1 to 3 and 5 to 13 in the Table";

(b) after sub-paragraph (4) insert—

"(4A) The Treasury may by order make such amendments to item 4 in the Table as they think fit in consequence of any amendment, revocation or re-enactment of the regulations mentioned in that item."

4 In the table at the end of paragraph 1, in item 4 (annual return of payments for purposes of PAYE regulations etc), for the words in the third column substitute—

"Return under any of the following provisions of the Income Tax (PAYE) Regulations 2003 (S.I. 2003/2682)—

(a) regulation 67B (real time returns)

(b) regulation 67D (exceptions to regulation 67B)".

5 In paragraph 2 (amount of penalty: occasional returns and returns for periods of 6 months or more), for "1 to 5" substitute "1 to 3, 5".

6 After paragraph 6A insert—

"Amount of penalty: real time information for PAYE

6B Paragraphs 6C and 6D apply in the case of a return falling within item 4 in the Table.

6C (1) If P fails during a tax month to make a return on or before the filing date, P is liable in respect of that month to a penalty under this paragraph.

(2) But, in each tax year, P is not liable to any penalty under this paragraph in respect of the first tax month during which P fails to make a return on or before the filing date.

(3) P may be liable under this paragraph to no more than one penalty in respect of each tax month.

(4) The penalty under this paragraph is to be calculated in accordance with regulations made by the Commissioners.

(5) Regulations under sub-paragraph (4) may provide for a penalty under this paragraph in respect of a tax month to be calculated by reference to either or both of the following matters—

(a) the number of persons employed by P;

(b) the number of previous penalties incurred by P under this paragraph in the same tax year.

(6) The Commissioners may by regulations disapply sub-paragraph (2) in such circumstances as are specified in the regulations.

(7) If P has elected under PAYE regulations to be treated as different employers in relation to different groups of employees, this paragraph applies to P as if—

(a) in respect of each group P were a different person, and

(b) each group constituted all of P's employees.

(8) Regulations made by the Commissioners under this paragraph may include—

(a) different provision for different cases, and

(b) such incidental, consequential and supplementary provision as appears to the Commissioners to be expedient.

6D (1) P may be liable to one or more penalties under this paragraph in respect of extended failures.

(2) In this paragraph an "extended failure" means a failure to make a return on or before the filing date which continues after the end of the period of 3 months beginning with the day after the filing date.

(3) P is liable to a penalty or penalties under this paragraph if (and only if)—

(a) HMRC decide at any time that such a penalty or penalties should be payable in accordance with sub-paragraph (4) or (6), and

(b) HMRC give notice to P specifying the date from which the penalty, or each penalty, is payable.

(4) HMRC may decide under sub-paragraph (3)(a) that a separate penalty should be payable in respect of each unpenalised extended failure in the tax year to date.

(5) In that case the amount of the penalty in respect of each failure is 5% of any liability to make payments which would have been shown in the return in question.

(6) HMRC may decide under sub-paragraph (3)(a) that a single penalty should be payable in respect of all the unpenalised extended failures in the tax year to date.

(7) In that case the amount of the penalty in respect of those failures is 5% of the sum of the liabilities to make payments which would have been shown in each of the returns in question.

(8) For the purposes of this paragraph, an extended failure is unpenalised if a penalty has not already been imposed in respect of it under this paragraph (whether in accordance with sub-paragraph (4) or (6)).

(9) The date specified in the notice under sub-paragraph (3)(b) in relation to a penalty—

(a) may be earlier than the date on which the notice is given, but

(b) may not be earlier than the end of the period mentioned in sub-paragraph (2) in relation to the relevant extended failure.

(10) In sub-paragraph (9)(b) "the relevant extended failure" means—

(a) the extended failure in respect of which the penalty is payable, or

(b) if the penalty is payable in respect of more than one extended failure (in accordance with sub-paragraph (6)), the extended failure with the latest filing date."

7 In paragraph 18 (assessment), for sub-paragraph (5) substitute—

"(5) Sub-paragraph (6) applies if—

(a) an assessment in respect of a penalty is based on a liability to tax that would have been shown in a return, and

(b) that liability is found by HMRC to be excessive.

(6) HMRC may by notice to P amend the assessment so that it is based upon the correct amount.

(7) An amendment under sub-paragraph (6)—
(a) does not affect when the penalty must be paid;
(b) may be made after the last day on which the assessment in question could have been made under paragraph 19."

8 (1) Paragraph 19 (assessment) is amended as follows.

(2) In sub-paragraph (2) after "Date A is" insert "—
(a) in the case of an assessment of a penalty under paragraph 6C, the last day of the period of 2 years beginning with the end of the tax month in respect of which the penalty is payable,
(b) in the case of an assessment of a penalty under paragraph 6D, the last day of the period of 2 years beginning with the filing date for the relevant extended failure (as defined in paragraph 6D(10)), and
(c) in any other case,".

(3) In sub-paragraph (3)(a), after "return" insert "or returns (as the case may be in relation to penalties under section 6C or 6D)".

9 (1) Paragraph 27 (interpretation) is amended as follows.

(2) After sub-paragraph (2) insert—

"(2A) "The Commissioners" means the Commissioners for Her Majesty's Revenue and Customs."

(3) After sub-paragraph (3) insert—

"(3A) "Tax month" means the period beginning on the 6th day of a month and ending on the 5th day of the following month."

Amendments to Schedule 56 to FA 2009: penalty for failure to make payments on time

10 Schedule 56 (penalty for failure to make payments on time) to FA 2009 is amended in accordance with paragraphs 12 to 14.

11 In paragraph 1 (penalty for failure to pay tax), in sub-paragraph (4), for the words from "the date on which" to the end substitute "the day after the date specified in or for the purposes of column 4 of the Table in relation to that amount."

12 (1) Paragraph 6 (amount of penalty: PAYE and CIS amounts) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(1) P is liable to a penalty under this paragraph, in relation to each tax, each time that P makes a default in relation to a tax year."

(3) In sub-paragraph (2)—
(a) in the opening words, after "default" insert "in relation to a tax year";
(b) in paragraph (a), at the end insert "of tax payable in relation to the tax year";

(c) in paragraph (b), at the end insert "payable in relation to the tax year";

(d) in paragraph (c), at the end insert "payable in relation to the tax year";

(e) in paragraph (d), at the end insert "and due for the tax year".

(4) For sub-paragraphs (3) to (7) substitute—

"(3) But where a failure to make one of those payments (or to pay an amount comprising two or more of those payments) would, apart from this sub-paragraph, constitute the first default in relation to a tax year, that failure does not count as a default in relation to that year for the purposes of a penalty under this paragraph.

(4) The amount of the penalty for a default made in relation to a tax year is determined by reference to—

(a) the amount of the tax comprised in the default, and

(b) the number of previous defaults that P has made in relation to the same tax year.

(5) If the default is P's first, 2nd or 3rd default in relation to the tax year, P is liable, at the time of the default, to a penalty of 1% of the amount of tax comprised in the default.

(6) If the default is P's 4th, 5th or 6th default in relation to the tax year, P is liable, at the time of the default, to a penalty of 2% of the amount of tax comprised in the default.

(7) If the default is P's 7th, 8th or 9th default in relation to the tax year, P is liable, at the time of the default, to a penalty of 3% of the amount of tax comprised in the default.

(7A) If the default is P's 10th or subsequent default in relation to the tax year, P is liable, at the time of the default, to a penalty of 4% of the amount of tax comprised in the default."

(5) In sub-paragraph (8), for paragraph (b) substitute—

"(b) a previous default counts for the purposes of sub-paragraphs (5) to (7A) even if it is remedied before the time of the default giving rise to the penalty."

(6) After sub-paragraph (8) insert—

"(8A) Regulations made by the Commissioners for Her Majesty's Revenue and Customs may specify—

(a) circumstances in which, for the purposes of sub-paragraph (2), a payment of less than the full amount may be treated as a payment in full, or

(b) circumstances in which sub-paragraph (3) is not to apply."

13 After paragraph 9 insert—

"Interaction with other penalties and late payment surcharges

9A In the application of the following provisions, no account shall be taken of a penalty under this Schedule—

(a) section 97A of TMA 1970 (multiple penalties),

(b) paragraph 12(2) of Schedule 24 to FA 2007 (interaction with other penalties), and

(c) paragraph 15(1) of Schedule 41 to FA 2008 (interaction with other penalties)."

14 (1) Paragraph 11 (assessment of penalty) is amended as follows.

(2) For sub-paragraph (4A) substitute—

"(4A) If an assessment in respect of a penalty is based on an amount of tax due or payable that is found by HMRC to be excessive, HMRC may by notice to P amend the assessment so that it is based upon the correct amount.

(4B) An amendment made under sub-paragraph (4A)—

(a) does not affect when the penalty must be paid;

(b) may be made after the last day on which the assessment in question could have been made under paragraph 12."

(3) Omit sub-paragraph (5).

Consequential amendment

15 In consequence of paragraph 7, paragraph 10 of Schedule 10 to the Finance (No. 3) Act 2010 is repealed.

EXPLANATORY NOTE

PENALTIES: LATE FILING, LATE PAYMENT AND ERRORS

SUMMARY

1. This clause and Schedule provide for penalties to apply where the Real Time Information (RTI) returns and payments required under the Income Tax (Pay As You Earn) Regulations 2003 (the PAYE Regulations) are not made on time or the returns are inaccurate.

DETAILS OF THE CLAUSE

2. Subsections (2) to (4) of the clause are the commencement provisions.

3. Subsection (2) provides that the amendments to Schedule 24 to the Finance Act 2007 (penalty for errors) have effect in relation to any assessment which is made on or after the day on which the Finance Bill receives Royal Assent.

4. Subsection (3) provides that the amendments to Schedule 55 to the Finance Act 2009 (new penalties for failure to make returns) and to Schedule 56 to the Finance Act 2009 (penalties for late payment) for RTI come into effect for tax year 2014-15.

5. Subsection (4) provides that the amendment to paragraph 6 of Schedule 56 to the Finance Act 2009 (in respect of the amount of a penalty for late payment of PAYE or tax due in relation to the Construction Industry Scheme) apply from the day on which the Finance Bill receives Royal Assent.

DETAILS OF THE SCHEDULE

6. The schedule amends Schedule 24 of Finance Act 2007 (FA 2007) which deals with inaccuracy penalties, and also amends Schedules 55 and 56 to Finance Act 2009 (FA 2009) which cover penalties for failure to make returns and failure to make payments on time respectively.

7. Paragraph 1 amends paragraph 13 of Schedule 24 FA 2007 for returns under PAYE and the Construction Industry Scheme (CIS). This Schedule covers applies penalties for inaccurate returns.

8. Subparagraph 1(2) amends paragraph 13(1) of Schedule 24 FA 2007 and sub-paragraph (3) inserts new sub-paragraphs (1ZA) to (1ZD) so

that penalty notices for inaccuracies that occur more than once during a tax year are required to state only the year in which they occurred.

9. Paragraphs 2 to 9 make amendments to Schedule 55 FA 2009 for late filing penalties.

10. Paragraph 3 removes RTI returns from the definition of "penalty date" in paragraph 1(4) of Schedule 55 FA 2009. It also inserts new paragraph 1(4A) to permit the Treasury to amend item 4 of the Table at the end of paragraph 1 of Schedule 55 FA 2009 as a consequence of any amendment to the PAYE regulations.

11. Paragraph 4 amends the definition of return in the Table at the end of paragraph 1 of Schedule 55 FA 2009 to refer to RTI returns made under regulation 67B or 67D of the PAYE Regulations.

12. Paragraph 5 removes RTI returns from paragraph 2 of Schedule 55 FA 2009, which means the penalties set out in paragraphs 3 to 6 of that Schedule do not apply to RTI returns.

13. Paragraph 6 inserts new paragraphs 6B to 6D into Schedule 55 FA 2009. New paragraph 6B provides that paragraphs 6C and 6D apply where the return is an RTI return. New paragraph 6C provides for a filing default to apply where a return is late; for one late filing penalty to apply in each tax month for each PAYE scheme where filing defaults are incurred; and for an initial unpenalised filing default each tax year for each PAYE scheme. New paragraph 6C also provides a power for the Commissioners for Revenue and Customs to set the size of the late filing penalties in Regulations, and for the Commissioners to specify in Regulations the circumstances in which the unpenalised default is to be disapplied. Subparagraph 6C(7) provides that late filing penalties will apply to each PAYE scheme that an employer can elect to have under the PAYE Regulations. New paragraph 6D provides for a penalty for "extended failures", that is where a return is outstanding for 3 months or more. This penalty is not automatic, and will be calculated at 5 per cent. of the amount that would have been shown as due on any missing return(s).

14. Paragraph 7 substitutes paragraph 18(5) of Schedule 55 FA 2009 and inserts new subparagraphs (6) and (7) so that the quantum of the penalties assessed under this Schedule can be amended (rather than the assessment being withdrawn and replaced), where the original penalty assessment is based on an excessive tax liability.

15. Paragraph 8 amends paragraph 19 of Schedule 55 FA 2009 in relation to RTI returns. As a consequence of the amendments, penalties in relation to such returns can be assessed within the normal time limits for all other penalties assessed under Schedule 55 FA09.

16. Paragraph 9 inserts a definition of "the Commissioners" and the "tax month" into paragraph 27 of Schedule 55 FA 2009.

17. Paragraphs 10 to 14 make amendments to Schedule 56 FA 2009 for late payment penalties.

18. Paragraph 11 amends the definition of "penalty date" in paragraph 1(4) of Schedule 56 FA 2009 to make it clear that a late payment penalty arises on the day after the date specified in column 4 of the Table in paragraph 1 of schedule 56 FA09.

19. Paragraph 12 amends paragraph 6 of Schedule 56 FA 2009. Subparagraph (2) substitutes paragraph 6(1) and subparagraph (3) amends paragraph 6(2) to provide that penalties are incurred for each late payment relating to a tax year, rather than for each payment due during a tax year.

20. Paragraph 12(4) substitutes paragraphs 6(3) to (7) and inserts a new subparagraph (7A) into Schedule 56 FA 2009. The substituted paragraph 6(3) provides for the first default to be unpenalised. Substituted paragraphs 6(4) to (7) detail how the quantum of a penalty is to be established and provide that an earlier penalty does not have to be recalculated should a later penalty be incurred in the tax year.

21. Paragraph 12(5) amends subparagraph (8) by substituting a new paragraph (b) to provide that a default that has subsequently been remedied still counts as default when calculating subsequent penalties under Schedule 56 FA 2009.

22. Paragraph 12(6) introduces new subparagraph (8A) which provides that the Commissioners may specify in regulations circumstances where a payment of less than the full amount due under the PAYE regulations may be treated as full payment, and so not incur a late payment default. Regulations may also set out the circumstances where the first default in the tax year will count as a default for penalty purposes.

23. Paragraph 13 introduces a new paragraph 9A into Schedule 56 FA 2009 to ensure that the quantum of certain specified penalties are not affected by penalties under Schedule 56 FA 2009.

24. Paragraph 14 substitutes a new paragraph 11(4A) of Schedule 56 FA 2009 to ensure that a late payment penalty can be reduced, rather than withdrawn and replaced, should the underlying amount of tax due upon which the penalty is based be reduced. This paragraph also inserts new subparagraph 11(4B) into Schedule 56 FA 2009 which makes it clear that such a reduction does not affect the penalty payment date, and can be made after the final date for raising the

initial late payment penalty as set by paragraph 12 of Schedule 56 FA 2009. Paragraph 14(3) repeals paragraph 11(5), which permitted a supplementary assessment to be made in respect of penalties under paragraph 6 of Schedule 56 FA 2009.

25. Paragraph 15 repeals paragraph 10 of Schedule 10 to the Finance (No.3) Act 2010. This paragraph, which made an amendment to the late filing penalty rules for replacement assessments, is no longer required as a consequence of the amendment made by paragraph 7 of the Schedule.

BACKGROUND NOTE

26. Under RTI, employers have to provide HMRC with pay and deduction details each time they pay their employees. The majority of employers will do this via their payroll software.

27. The increased frequency of returns under RTI could lead to an increase in the number of inaccurate returns submitted by employers. When an inaccuracy is made on an RTI or Construction Industry Scheme return and is repeated in subsequent returns, this legislation allows HMRC to notify the penalties together rather than individually, as would be required under the current provisions.

28. If the pay and deduction information is not received "on or before" employees are paid then a late filing default will arise. This may lead to a late filing penalty under the provisions inserted into schedule 55 FA09 and described above.

29. PAYE payment obligations are not changing under RTI. All employers must continue to pay HMRC the sums deducted from the payments to their employees within 17 days after the end of the tax period where payment is made by an approved method of electronic communications, or within 14 days after the end of the tax period where payment is made by any other means. If these payments are not received in full and on time a late payment default will arise, which could lead to a late payment penalty. From April 2014 these late payment penalties will be automated and will be charged in-year, rather than after the end of the tax year.

30. If you have any questions about this change, or comments on the legislation, please contact Stephanie Allistone on 020 7147 2394 (email: stephanie.allistone@hmrc.gsi.gov.uk).