

Explanatory Note

Clause 80: Data-gathering powers: daily penalties for extended default

Summary

1. This clause amends Schedule 23 to Finance Act (FA) 2011 which covers HM Revenue & Customs (HMRC) data-gathering powers. This enables HMRC to collect data from certain third parties for use in HMRC's compliance activities.
2. The purpose of these amendments is to improve the mechanism by which increased daily penalties are approved and assessed, making it clear that it is for the tribunal to decide a new maximum increased daily penalty amount and the date from which it may be applied, and for HMRC to assess and notify any such penalties. HMRC considered that, as drafted, the provisions were not sufficiently clear and may have led to confusion for taxpayers and obstacles to its administration of these penalties.

Details of the clause

3. Paragraph 1 amends Part 4 of Schedule 23 FA 2011.
4. Paragraph 2 amends paragraph 38 of Schedule 23 FA2011. The effect of this change will be for the tribunal to decide whether an increased daily penalty is assessable, determine the new maximum amount of the penalty and the date from which it will be applied. The process for assessing the increased penalty remains with HMRC, but will now be allowed under paragraph 31 of Schedule 23 FA2011. The new maximum amount allowed by the tribunal replaces the £60 amount in that paragraph.
5. Paragraph 3 corrects the administrative provisions in paragraph 39 of Schedule 23 of FA2011 about notification of the penalty. The changes provide a framework for assessing the penalty and enable use of the existing daily penalty framework under paragraph 35 of Schedule 23 FA 2011.
6. Paragraph 4 makes a consequential correction to paragraph 40 of Schedule 23 FA2011 by omitting paragraph 39 of Schedule 23 FA2011.
7. Paragraph 5 provides that there is no right of appeal against HMRC using the new maximum amount determined by the tribunal. An appeal against the new maximum amount would be made under the normal tribunal appeal rules.

Background note

8. HMRC's data-gathering powers were modernised in Schedule 23 FA 2011 following

consultations, as part of the HMRC Review of Powers, Deterrents and Safeguards. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. This data is used for risk analysis, to enable HMRC to target its compliance work more accurately.

9. The data helps HMRC identify traders that are receiving income but are not registered for tax, as well as those who are registered but under-declare their income to HMRC.
10. The clause amends Schedule 23 FA 2011 to clarify the administration of the increased daily penalty. There are two other measures in this Bill which add two new categories of data-holders (electronic payment providers and business intermediaries) to Schedule 23 FA2011.
11. If you have any questions about this change, or comments on the legislation, please contact Angela Roach on 03000 586962 (email: angela.roach@hmrc.gsi.gov.uk) or Paul Miller. 03000 586 520 (paul.miller@hmrc.gsi.gov.uk)