



Companies House
— for the record —

IMPLEMENTATION OF COMPANIES ACT 2006

**SECTION 453: CIVIL ADMINISTRATIVE PENALTIES FOR THE LATE
DELIVERY OF COMPANY ACCOUNTS (“LATE FILING PENALTIES”)**

CONSULTATION DOCUMENT

CONTENTS

EXECUTIVE SUMMARY	4
How to respond	4
Confidentiality & Data Protection	4
Consultation Questions	5
THE PROPOSALS	6
Introduction	6
Proposed new table of penalties	7
Proposed “repeat offender” supplement	7
Limited Liability Partnerships	8
Defective Delivery of Accounts	8
Rationale for the proposed changes	9
Timing	10
Annex A – Code of practice on consultation	11
Annex B – Draft Regulations	12

Context and Purpose of this consultation

Section 441 of the Companies Act 2006 (“the Act”) requires all companies to deliver annual accounts to the Registrar of Companies by the due date. Section 453 specifies that a civil administrative penalty shall be payable if the accounts are delivered late, and provides for the Secretary of State to specify the level of this penalty through regulations.

The Government intends to bring forward regulations under section 453 later this year. Our intention is to take the opportunity to change the current schedule of late filing penalties – as contained in section 242A of the Companies Act 1985 – to make the regime more effective. In parallel, the Government intends to amend section 242A of the 1985 Act so that these changes also apply to accounts prepared under the 1985 Act but delivered late on or after 1 February 2009.

The purpose of this document is to consult on these proposed changes.

Issued 20 July 2007

Respond by 12 October 2007

Enquiries to

LFP Consultation

Companies House

Crown Way

Cardiff CF14 3UZ

E-mail: lfpreform@companieshouse.gov.uk

EXECUTIVE SUMMARY

This document sets out the Government's plans for the future of the civil administrative penalty regime (known as "Late Filing Penalties" or LFP) for companies who file their accounts late. It proposes the following changes to the regime as it stands.

- a) All penalties to be increased to take account of inflation between 1992 and 2007.
- b) A faster rate of increase in penalties for companies who file more than one month late.
- c) A doubling of the penalty for any company which files late having also filed late the previous year.

The proposal is that changes (a) and (b) should come into force on 1 February 2009, applying both to accounts filed under the 1985 Act and under the 2006 Act. Change (c) would apply only to accounts filed under the new Act.

This proposal will apply to all companies in the United Kingdom.

This proposal will not itself change the schedule of penalties payable by Limited Liability Partnerships (LLPs). However, it is our intention that the final schedule of penalties for companies should also be applied – through separate regulations - to LLPs.

How to respond

This consultation opened on 20 July 2007. Please send us your response by 12 October 2007. Responses and enquiries should be sent to:

lfpreform@companieshouse.gov.uk

or to:

Late Filing Penalty Consultation
Companies House
Crown Way
Cardiff CF14 3UZ

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure 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 other 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, amongst other things, with 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 Companies House.

Companies House 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.

A copy of the Code of Practice on Consultation is in Annex A.

Additional Copies

Additional copies can be obtained from the Companies House website at <http://www.companieshouse.gov.uk/companiesAct/publications.shtml>

If you do not have access to a computer, you can obtain a copy by telephoning 0870 3333636.

Consultation Questions

We would like your views on the following questions.

1. Would the proposed new regime meet our objective of persuading companies to file their accounts on time?
2. Would the proposed new regime be a fair and proportionate response to the issue of late filing?
3. Should the date on which the new penalties come into force be 1 February 2009, or should it be either earlier or later?

THE PROPOSALS

Introduction

1. Section 441 of the Companies Act 2006 (“the Act”) requires companies to file annual accounts by the due date with the Registrar of Companies. The Act goes on to stipulate that a director of a company that does not do this commits an offence. In addition, section 453 of the Act provides as follows.

453 Civil penalty for failure to file accounts and reports

(1) Where the requirements of section 441 are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, the company is liable to a civil penalty.

This is in addition to any liability of the directors under section 451.

(2) The amount of the penalty shall be determined in accordance with regulations made by the Secretary of State by reference to-

(a) the length of the period between the end of the period for filing the accounts and reports in question and the day on which the requirements are complied with, and

(b) whether the company is a private or public company.

(3) The penalty may be recovered by the registrar and is to be paid into the Consolidated Fund.

(4) It is not a defence in proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part.

2. This provision replaces section 242A of the Companies Act 1985, as amended by the Companies Act 1989 (“the existing regime”). Whereas the current provision applies only to companies based in England, Wales and Scotland, the new provision will apply also to Northern Ireland.

3. The principle of a Late Filing Penalty (LFP) regime is not the subject of this consultation. The fact that there should be a regime was reaffirmed by Parliament when it agreed to section 453 of the new Act.

4. Nevertheless, it is worth emphasising that the timely filing of company accounts is the bedrock of the limited liability system. If companies are to enjoy the benefits of limited

liability, it is essential that customers, suppliers and other stakeholders are able to view the company’s accounts as a guide to their dealings with the company.

5. LFP were introduced in 1992 to respond to the fact that large numbers of company accounts were not being filed on time. They have worked – significantly more accounts are now filed on time than was the case before 1992. 85% of company accounts are now filed on time and, at any one time, 95.5% of companies have filed their latest set of accounts.

Proposed new table of penalties

6. The current table of penalties, as set out in the existing regime, is as follows.

How late are the accounts delivered	Penalty - Private Company	Penalty – PLC
Not more than three months	£100	£500
More than three months but not more than six months	£250	£1000
More than six months but not more than twelve months	£500	£2000
More than twelve months	£1000	£5000

7. The proposed new table of penalties is as follows.

How late are the accounts delivered	Penalty – Private Company	Penalty – PLC
Not more than one month	£150	£750
More than one month but not more than three months	£375	£1500
More than three months but not more than six months	£750	£3000
More than six months	£1500	£7500

Proposed “repeat offender” supplement

8. In addition, the proposal is that the penalty should be double the figure in the table if the company also filed its accounts late the previous year. To give an example:

- Year 1. Company A files its first accounts under the new Act two weeks late. All companies start with a clean slate. The penalty is £150 (assuming this happens on or after 1 February 2009).
- Year 2. Company A files six weeks late the following year. The penalty is £750 (£375 for six weeks late, doubled because the previous year’s accounts were late).
- Year 3. Company A files two weeks late. The penalty is £300 (£150 for two weeks late, doubled because the previous year’s accounts were late).

- Year 4. Company A files on time.
- Year 5. Company A files two weeks late. The penalty is £150.

9. The scenario above is the most likely scenario – when the accounts in year 1 were delivered late and the penalty levied and paid. Our intention is that the repeat offender supplement should also apply when a set of accounts are delivered late in the following circumstances:

- a) with the previous year's accounts still outstanding;
- b) if the previous year's accounts were delivered late and the penalty levied but the Registrar decided not to collect the penalty because of exceptional circumstances (for example because of a fire at the business premises or the illness of the only director) – the onus remains on the company to deliver the following year's accounts on time;

In all cases, companies would be warned at the point of first default that the repeat offender supplement would be payable in the event of late delivery the following year. They would then be reminded of the fact as part of the normal Companies House accounts reminder process.

Limited Liability Partnerships

10. Under the Limited Liability Partnerships Regulations 2001, the LFP regime also applies to Limited Liability Partnerships (LLPs). Our intention is that the proposed changes set out above – once finalised - should also be applied to LLPs. This will be done by means of separate regulations under the Limited Liability Partnerships Act 2000.

Defective Delivery of Accounts

11. There will be a new provision under the Companies Act 2006 for Late Filing Penalties to be charged on accounts that have been filed with the Registrar but have subsequently been discovered (through public complaint for instance) not to have met the requirements for proper delivery under section 1072.

12. Where this event occurs there is a power under section 1073 for the Registrar to issue a notice under section 1094(4). This puts the company under notice that the company has not met the requirements for proper delivery and that a replacement document is required. The company will also be under notice that if the requirements for proper delivery are not complied with within fourteen days from the date of the notice then the subsequent period will be classed as a period of default to which section 453 (civil penalty for failure to file accounts) will apply.

13. In effect the LFP clock will start ticking on the expiry of the fourteen days given by the notice and the normal penalty bands would apply. In other words, if the company responds after the fourteen days but before three months they would receive a £150 penalty etc.

This 'new' late filing penalty would be created whether or not the company had been liable, and or paid, a late filing penalty on the delivery of the initial set of accounts. Hence a company could receive two, or more, late filing penalties from the requirement to deliver accounts for a particular filing period.

Rationale for the proposed changes

14. As set out above the regime has been very effective over time. However, its effectiveness has begun to decline in recent years.

15. The effectiveness of the existing regime was debated during the Parliamentary passage of the Act.¹ Strong concerns were expressed to the effect that large numbers of companies were filing late and that the existing regime was not proving an adequate deterrent. An amendment was proposed which would have introduced the sanction of strike-off for late filing. The Government took the view that this would be excessively draconian. However, we took on board the concerns that were raised and undertook to address them in a fair and proportionate way. We see the reform of the LFP system as a fair and proportionate response to the growing problem of late delivery of accounts. Our intention is to make the LFP regime as effective as it was when it was first introduced, while at the same time targeting higher penalties on those companies who file very late or repeatedly late.

16. Taking the proposed changes in turn:

- a) LFP rates have not changed since the introduction of the regime in 1992. The proposal includes an across the board increase in all penalties in line with the increase in the RPI between April 1992 and February 2007. Rounded up, this equates to a 50% increase.²
- b) Our statistics show a surge of accounts filed just under three months late, before the £100 penalty changes to £250. This is backed by feedback from our customers to the effect that this is deliberate behaviour – that a £100 penalty for three months extra time to prepare and submit accounts is seen as “a bargain”. We therefore propose to amend the schedule of penalties so that they increase faster and that any company which files more than one month late pays more in real terms than it does now.
- c) Our experience is that a significant number of those companies who file late do so repeatedly and pay the LFP each year without complaint. A number of our stakeholders have suggested to us in the past that these repeat offenders should pay more. We have incorporated this proposal. The proposal to double penalties has been put forward on the basis that it is simple and that it does not penalise any one group of customers disproportionately – we also considered a flat rate supplement to the penalty, but concluded that this would have a disproportionate impact on those in the

¹ Lords Hansard 7 March 2006. Amendment 315ZASA proposed by Lord Borrie.

² Source: Office of National Statistics, “RP02” index. The index increased from 136.7 to 201.6. This would involve increasing a £100 penalty to £147. We have rounded this up to £150

lowest penalty band. We also considered it important that a company should be able to “rehabilitate” itself by filing on time the following year.

Timing

17. The Government’s intention is to bring into force the provisions of the new Act relating to accounts on 6 April 2008. This will include the requirement for a private company to file its accounts nine months after the end of the year as opposed to ten. The new Act will therefore apply to accounts for years beginning on or after this date. To take an example:

- company A begins its reporting year on 1 May 2008. The new Act applies to the accounts for this year.
- the year ends on 30 April 2009.
- the accounts for this year fall on the last day of the ninth following month – 31 January 2010.

18. We understand that companies will need to adjust to the requirement to file in nine months as opposed to ten. Our view is that, on balance, it would not be right to change the penalty regime at exactly the same time as companies are filing their first accounts under the new deadline. On the other hand, we do not want to delay the implementation of the new penalties unduly. We therefore propose that the new table of penalties should apply to all accounts delivered late on or after 1 February 2009, regardless of whether they were prepared under the 1985 Act or the 2006 Act. This would give companies at least ten months notice of the change, allowing them to make the necessary efforts to file on time if they wish to avoid the higher penalties.

19. To give effect to this, the Government’s intention is to
- a) make regulations under section 453 of the 2006 Act; and, simultaneously to
 - b) amend section 242A of the 1985 Act, using regulations under section 257 of the 1985 Act for this purpose.

20. Repeat offender penalties will only apply once a company has delivered two sets of accounts late in successive years under the new Act. In practical terms, this means that the Government does not expect to levy significant numbers of repeat offender penalties on private companies until early in 2011.

Companies House
July 2007

Annex A – Code of practice on consultation

The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Nick Cooper,
BERR Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Nick on 020 7215 6206
Or e-mail to: nick.cooper@berr.gsi.gov.uk

Annex B – Draft Regulations

Draft Regulations laid before Parliament under section 257(2)(d) of the Companies Act 1985 and sections 453(5) and 1290 of the Companies Act 2006 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No. 0000

COMPANIES

The Companies (Late Filing Penalties) Regulations 2007

Made - - - - *****
Coming into force - - *6th April 2008*

The Secretary of State makes the following regulations in exercise of the powers conferred on him by section 257(1) and (4)(a) and (d) of the Companies Act 1985⁽³⁾ and sections 453 and 1292(1)(a) and (c) of the Companies Act 2006⁽⁴⁾.

In accordance with section 257(2)(d) of the Companies Act 1985 and sections 453(5) and 1290 of the Companies Act 2006, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, coming into force and interpretation

1.—(1) These regulations may be cited as the Companies (Late Filing Penalties) Regulations 2007.

(2) These regulations come into force on 6th April 2008.

(3) References in these regulations to late filing, or to a failure to comply with filing requirements, are to a failure to comply with the requirements of section 441 of the Companies Act 2006 (which apply in relation to financial years beginning on or after 6th April 2008) in relation to a company's accounts and reports before the end of the period for filing those accounts and reports.

(4) For the purposes of regulations 2 and 4, whether a company is a public company or a private company depends upon its status at the end of the financial year in question.

Late filing penalties under the Companies Act 2006 as from 6th April 2008

2.—(1) This regulation applies where the requirements of section 441 of the Companies Act 2006 are complied with before 1st February 2009.

⁽³⁾ 1985 c.6: section 257 was inserted by the Companies Act 1989 (c.40), section 20.

⁽⁴⁾ 2006 c.46.

(2) The amount of the civil penalty to which a company is liable under section 453 of the Companies Act 2006 in case of late filing is that shown in the following table:

<i>Length of period</i>	<i>Public company</i>	<i>Private company</i>
Not more than 3 months.	£500	£100
More than 3 months but not more than 6 months.	£1,000	£250
More than 6 months.	£2,000	£500

(3) The first column of the table (“length of period”) refers to the length of the period between the end of the period for filing the accounts and reports in question and the day on which the requirements of section 441 are complied with.

Late filing penalties under the Companies Act 1985 as from 6th April 2008

3.—(1) This regulation applies where the requirements of section 242(1) of the Companies Act 1985 are complied with on or after 6th April 2008.

(2) In section 242A of that Act, after subsection (2) insert—

“(2A) For the purposes of subsection (2), whether a company is a public company or a private company depends upon its status at the end of the financial year in question.”

Late filing penalties under the Companies Act 2006 as from 1st February 2009

4.—(1) This regulation applies where the requirements of section 441 of the Companies Act 2006 are complied with on or after 1st February 2009.

(2) The amount of the civil penalty to which a company is liable under section 453 of the Companies Act 2006 in the case of late filing is that shown in the following table or, if there was a failure to comply with filing requirements in relation to the previous financial year of the company and that previous financial year had begun on or after 6th April 2008, double that shown in the table:

<i>Length of period</i>	<i>Public company</i>	<i>Private company</i>
Not more than 1 month.	£750	£150
More than 1 month but not more than 3 months.	£1,500	£375
More than 3 months but not more than 6 months.	£3,000	£750
More than 6 months.	£7,500	£1,500

(3) The first column of the table (“length of period”) refers to the length of the period between the end of the period for filing the accounts and reports in question and the day on which the requirements of section 441 are complied with.

Late filing penalties under the Companies Act 1985 as from 1st February 2009

5.—(1) This regulation applies where the requirements of section 242(1) of the Companies Act 1985 (which continue to apply in relation to financial years beginning before 6th April 2008) are complied with on or after 1st February 2009.

(2) For the table in section 242A(2) of the Companies Act 1985⁽⁵⁾ substitute the following table:

<i>Length of period</i>	<i>Public company</i>	<i>Private company</i>
Not more than 1 month.	£750	£150
More than 1 month but not more than 3 months.	£1,500	£375
More than 3 months but not more than 6 months.	£3,000	£750
More than 6 months.	£7,500	£1,500

⁽⁵⁾ Section 242A was inserted by the Companies Act 1989, section 11.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations determine the penalties which companies must pay to the registrar of companies if they file their annual accounts and reports late.

The penalties for late filing of accounts and reports under the Companies Act 2006 (for financial years beginning on or after 6th April 2008) are set out in the table in regulation 2 when the filing takes place before 1st February 2009, and in the table in regulation 4 when the filing takes place on or after 1st February 2009. The penalty is doubled for late filing in two successive years beginning on or after 6 April 2008. The level of penalty depends upon whether the company was public or private at the end of the financial year in question (regulation 1(4)).

The provisions about penalties for late filing of accounts and reports under the Companies Act 1985 (for financial years beginning before 6th April 2008) are also amended. The level of penalty depends upon whether the company was public or private at the end of the financial year in question (regulation 3). When the filing takes place on or after 1st February 2009 the penalties are as set out in the table in regulation 5. There is no provision for doubling the penalty for late filing in two successive years when either year began before 6th April 2008.