



**LATE FILING PENALTIES: IMPLEMENTATION OF SECTION 453 OF
THE COMPANIES ACT**

RESPONSE TO CONSULTATION

BERR | Department for Business
Enterprise & Regulatory Reform

A BERR SERVICE

January 2008

LATE FILING PENALTIES: IMPLEMENTATION OF SECTION 453 OF THE COMPANIES ACT

RESPONSE TO CONSULTATION

1. Companies House published a consultation document on 13 July, asking for responses by 12 October. 16 responses were received. Some responses came from individuals or bodies representing companies, others from organisations with an interest in reading accounts on the public record.

Answers to questions in the consultation document

2. The document proposed a number of changes to the existing Late Filing Penalty regime. It asked three questions:
 - Would this proposal meet the Government's objective of persuading companies to file their accounts on time?
 - Would the proposal be a fair and proportionate response to the issue of late filing?
 - Should the implementation date be 1 February 2009, or should it be earlier or later.
3. A minority of respondents argued that the concept of Late Filing Penalties was fundamentally misconceived. They argued that it was an unjustified burden on small companies who did not file late on purpose and, as such, neither effective nor fair and proportionate. It followed that they did not accept the premise of the third question.
4. A majority of respondents thought that the proposal was fair and proportionate. A significant minority thought that it did not go far enough, specifically in respect of large companies and companies who filed very late in a calculating way. Some respondents called for higher penalties for large companies, perhaps linked to turnover. Others argued that the repeat offender proposal did not go far enough and that the penalty should continue to be multiplied each time a company filed late.
5. **On balance, we have concluded that our proposal should stand, as it offers the best balance between the interests of companies and the interests of those who wish to read company accounts.**

Other issues raised

The Corresponding Date Rule

6. Several respondents raised the issue of the "corresponding date" rule. At present, private company accounts are due on the "corresponding date" ten months after the end of the reporting year. For example, if a year ends on 28 February, the accounts are due on 28 December, not 31 December. This is a

frequent cause of confusion for companies, often leading to Late Filing Penalties being incurred.

7. The Government has decided to change the law on this point. For all accounts filed under the Companies Act 2006 (in other words, for years beginning on or after 6th April 2008), **accounts which have a year end that is the last day of the month will also have a due date that is the last day of the month**. This does not affect accounts for years which end in the middle of a month. So, to give two examples:
 - Year begins on 1 May 2008. Year ends on 30 April 2009. Due date is the corresponding date nine months later, so 31 January 2010; but
 - Year begins on 15 May 2008. Year ends on 14 April 2009. Due date will still be 14 January 2010.

The Registrar's discretion not to collect penalties

8. Some respondents questioned the exercise of the Registrar's discretion not to collect penalties. This discretion will continue to be exercised in the same way under the new Act. Companies House are guided in the exercise of the Registrar's discretion by case law, which makes clear that any decision not to collect a penalty must be exceptional.
9. The criteria exercised by the Registrar have been published in Companies House's booklet on "Late Filing Penalty Appeals". A company must show that a set of exceptional circumstances prevented it from filing on time. The expectation is that a company will make all reasonable efforts to overcome any difficulties – for example, finding an alternative method of delivery if the ordinary postal service is disrupted.

Late Filing Penalties and small companies

10. Some respondents argued that the principle of late filing penalties did not work for small companies, including dormant companies, charities and flat management companies. The argument was that these companies have no funds with which to pay penalties and that it seems perverse to penalise them for what may have been a small error leading to accounts filed a couple of days late.
11. The Government sympathises with the difficulties that some small companies face. The whole philosophy of the new Companies Act is to "think small first" – to lay down a framework of rules that are designed with small companies in mind and that small companies find it easy to follow. But there remains a minimum level of obligations that all companies must satisfy, however small, as part of the "deal" of enjoying limited liability status. This includes the obligation to file some form of accounts. Our view is that, once these minimal obligations have been laid down in law, it is important that they are observed. Before Late Filing Penalties were introduced in 1992, the percentage of companies who filed their accounts on time was significantly

lower and the then Registrar faced serious public criticism for failing to discharge his responsibilities.

12. As pointed out by one respondent, the European Commission recently launched a consultation document on simplification of European company law. This proposed to define the smallest companies as “micro companies” which, among other things, would not be obliged to file accounts on the public record. The Government supports this proposal. However, it is at present only a proposal and the filing obligations of small companies remain unchanged for the time being.

Persistent and serious offenders

13. Some respondents argued that the proposed increased penalties would still be inadequate to deal with companies – especially larger companies – that filed repeatedly late as part of a calculated decision to keep their accounts out of the public domain.
14. We appreciate the spirit in which these comments were made. However, we do not think that imposing punitive penalties across the board would be right. Companies House sees the Late Filing Penalty regime working alongside the criminal offence of failing to file accounts, which exists under the Companies Act 1985 and is reproduced in the Companies Act 2006. Our approach is to prosecute in a targeted way those directors whose companies file very late or persistently late. During 2006-07, we launched 3,828 prosecutions and secured 1,797 convictions. The court also has the power to disqualify a director who persistently breaches their filing obligations under the Companies Act.

Next Steps

15. The Government has submitted draft regulations to Parliament to make the necessary changes to the Late Filing Penalty regime - the Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations 2008. The regulations will also bring the statutory filing period for Limited Liability Partnerships in line with that for limited companies. The regulations are available on the website of the Office of Public Sector Information (<http://www.opsi.gov.uk/si/dsi27-12>)