



Business Records Checks

Consultation document

Publication date: 17 December 2010

Closing date for comments: 28 February 2011

Subject of this consultation:	HMRC is planning a programme of Business Records Checks that will review both the adequacy and accuracy of business records within the 'small and medium enterprise' (SME) sector. No new legislation is proposed in this regard; the programme will use existing law regarding both record keeping requirements and penalties for failure to comply with those requirements, with penalties being imposed for significant record keeping failures.
Scope of this consultation:	This consultation is concerned with how best to implement a programme of Business Records Checks to achieve a major improvement in the standard of record keeping across the SME population, and to consider related issues. It is not looking at the appropriateness of existing legislation. Record keeping requirements were updated in Finance Act 2008 and guidance is continuing to be updated. Record keeping penalties will be considered as part of a separate review into HMRC's regulatory & specialist penalties.
Impact Assessment:	An Impact Assessment can be found at Annex B.
Who should read this:	Anyone involved in running a small or medium business; that is, businesses with a turnover of less than €50m and less than 250 employees. Accountants and others providing services of accountancy, book-keeping or tax advice to such businesses will have a particular interest.
Duration:	The consultation period begins 17 December 2010 and ends 28 February 2011.
Enquiries:	For enquiries about the content or scope of the consultation , contact 'Fraser Fairlie' at the email address immediately below. For requests for hard copies of the consultation or for information about consultation events , contact 'Christabel Cofie, HMRC, Room G5, West Wing, Somerset House, Strand, London WC2R 1LB'.
How to respond:	By email to ' Fraser Fairlie '. By post to 'Christabel Cofie, HMRC, Room G5, West Wing, Somerset House, Strand, London WC2R 1LB'.
Additional ways to become involved:	HMRC will be running workshops in February 2011 to explore the issues associated with beginning a programme of Business Records Checks later in 2011. Nominees of the Compliance Reform Forum (see the paragraph on 'Previous engagement' below) will be invited to attend. Through HMRC's links with tax agents who are not affiliated to any representative body, and through its links with SME focus groups, invitations will be extended to include those parties.
After the consultation:	Following the period of consultation HMRC will publish a summary of the responses to the consultation explaining how those responses were taken into account in taking forward a programme of Business Records Checks. It is envisaged that this will be published around the end of March 2011.
Previous engagement:	The general Business Records Checks proposition has been discussed in outline with the Compliance Reform Forum (CRF) and with a working-group of CRF representatives. This consultation takes account of those discussions. CRF is a forum of representative organisations with which HMRC consults and communicates about changes to HMRC compliance checking activities, with a particular focus on the views of tax agents and their customers. Specific purposes of CRF are to: • encourage representative bodies to input into the design and delivery of new compliance checking activities, and • help engage the wider agent community and HMRC operational staff in implementing changes to HMRC compliance checking activities.

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On request this document can be produced in alternative languages and formats including large print, audio formats and Braille

1. The Consultation Process

1.1 This consultation is being conducted in line with the principles outlined in the document [Tax policy making - a new approach](#) published at Budget June 2010. This sets out three stages for policy development:

- Stage 1 - set out objectives and identify options.
- Stage 2 - determine the best option and develop a framework for implementation, including detailed policy design.
- Stage 3 - draft legislation to effect the proposed change.

1.2 This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

1.3 A summary of the questions in this consultation is included at chapter 5.

1.4 Responses should be sent by 28 February 2011

- by email to '[Fraser Fairlie](#)' or,
- by post to: 'Christabel Cofie, HMRC, Room G5, West Wing, Somerset House, Strand, London WC2R 1LB'.
- by fax to 0207 438 4322

1.5 Telephone enquiries: 0207 438 7737; (from a text phone prefix this number with 18001)

1.6 Paper copies of this document or copies in alternative languages and formats may be obtained free of charge from the above address. This document can also be accessed from the HMRC internet site at [Consultations](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual

1.7 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

1.8 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.

1.9 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, amongst 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).

1.10 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.

The Consultation Code of Practice

- 1.11 This consultation is being run in accordance with the Code of Practice although it will be run for 10 weeks. The legislation underpinning the Business Records Check was itself subject to full public consultation. Nevertheless, HMRC sees merit in discussing, particularly with tax agent representatives, issues concerning the implementation of Business Records Checks. Workshops to explore the issues will be held in February 2011 with nominees of the Compliance Reform Forum; tax agents who are not affiliated to any representative body, and with representatives of small businesses. It has been decided within that timeframe to extend consultation beyond the workshops through the publication of this consultation document. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A

2. Why business records are important – The problem and the objective

2.1 The ability of those in business to make a complete and correct return of their tax liabilities depends directly on them keeping adequate and accurate business records.

The problem

2.2 Whilst the need to keep proper records in order to comply with tax obligations is widely acknowledged, HMRC's random enquiry programme indicates that poor record keeping is a problem in around 40% of all of SME cases (circa 5 million). Research by the Organisation for Economic Cooperation and Development (OECD) indicates that poor business record keeping generally leads to an underassessment of tax even where there is an audit-type check into a return for the period covered by such records. On this basis, poor business record keeping is responsible for a loss of tax in up to 2 million SME cases annually.

2.3 Tax agents tell us that whilst they advise clients on what records to keep and how to keep them, many do not follow the advice given. This causes additional unnecessary work for those agents who have no way of enforcing the standards that they think necessary

2.4 The loss of tax through poor record keeping, particularly in the current economic climate, cannot continue and HMRC is, therefore, determined to use the powers at its disposal to improve business record keeping and so reduce the loss to the Exchequer that stems from poor business records.

Objective of Business Records Checks

2.5 The objective is to:

- Use the powers of Schedule 36 Finance Act 2008 to check business records in up to 50,000 cases annually, beginning in the second half of 2011.
- Impose penalties for **significant** record keeping failures. And thereby:
- Bring about an improvement in record keeping across the population of the roughly 2 million SMEs whose records currently fall below standard. And by so doing:
- Reduce the tax losses to the Exchequer that result from poor business records.

2.6 This consultation is concerned chiefly with how best to implement a programme of Business Records Checks with penalties for significant record keeping failures, that will establish:

- A clear understanding of the record keeping obligations.
- The level of penalties that need to be imposed for significant record keeping failures to bring about the behaviour change needed.
- Whether a period of time (and if so the length of that period) should be allowed for business records to be brought up to standard before penalties for significant record keeping failures are imposed.

2.7 Other issues that this consultation wishes to explore and clarify are:

- the interaction between penalties for record keeping failures and penalties for inaccurate returns, and
- The interaction between the record keeping obligations for different taxes, and the penalties for failures in relation to those separate obligations.

2.8 This consultation is **not** concerned with whether HMRC should have powers to check business records, nor is it concerned with whether there should be statutory obligations to keep records and penalties for failures to comply with those record keeping obligations. Those powers and penalties already exist.

Potential benefits of Business Records Checks

2.9 HMRC benefits

- Improved record keeping leading to a reduction of tax lost.
- A greater degree of assurance as to the likely accuracy of returns in cases where there has been a Business Records Check.

Customer benefits

- Opportunity during a Business Records Check for business customers to ask questions and seek clarity if needed about their record keeping obligations and compliance with those obligations.
- A reduced likelihood of a subsequent compliance intervention (such as a full enquiry into their returns) for those who are seen to be fulfilling their record keeping obligations.
- Improved financial management (for example, keeping better track of debts and debtors); leading to
- Improved chances of business success. A business that has an adequate and running record of its trading position and profitability has more information available to be able to make the necessary business decisions and adjustments to ensure survival and success.

3. Legislative background to record keeping

Income Tax and Corporation Tax

- 3.1 There is already a requirement in law (see Annexe C for details) for anyone who may be required to make an Income Tax Self Assessment (ITSA) return or a Corporation Tax Self Assessment (CTSA) return to keep and preserve the records they need to make a correct and complete return.
- 3.2 And for those carrying on a trade, profession or business alone or in partnership, and for companies, the law further specifies that the records to be kept and preserved must include records of:
- all amounts received and expended in the course of the trade, profession or business, (or for companies, in the course of the company's activities) and the matters in respect of which those receipts and expenditures take place, and
 - in the case of a trade involving dealing in goods, all sales and purchases of goods made in the course of the trade.
- 3.3 The law provides that those who fail to comply with these record keeping obligations are liable to a penalty 'not exceeding' £3,000. However, HMRC policy to date has been that this penalty should be imposed only in the most serious cases.
- 3.4 This policy was because in relation to Income Tax and Corporation Tax, prior to new legislation introduced by Schedule 36 Finance Act 2008, HMRC generally had no power to examine business records other than in the course of an enquiry into a return.
- 3.5 Under the old regime of penalties for inaccurate returns, where an enquiry found that tax had been understated, the penalty for that understatement could be abated by up to 40% to reflect the degree of 'seriousness' of the understatement. In such cases, where record keeping failures had contributed to the understatement, HMRC policy has been to reflect this in the level of penalty abatement for 'seriousness' by reducing the amount of abatement, thus increasing the penalty for the understatement. In effect, the practice has been for the penalty for the understatement of tax and the penalty for the record keeping failures to be 'rolled into one'.
- 3.6 Things have now changed in two key respects:
- New penalty legislation for inaccurate returns, introduced by Schedule 24 Finance Act 2007, does not allow for any record keeping failures to be reflected in the size of the penalty for any understatement of tax. The penalties can no longer be 'rolled into one'. And
 - Parliament has given HMRC powers, in Schedule 36 Finance Act 2008, to make checks of business records whether or not a return has been made.
- 3.7 It is in relation to direct taxes (Income Tax and Corporation tax), where there has previously been no power to check records before a return is made, that Business Records Checks will bring the biggest change.

VAT

- 3.8 As with direct taxes, there is already existing legislation requiring a (VAT) taxable person to keep specific records. The law requires taxable persons to keep records which include:
- All their business accounting records;
 - Their VAT account;
 - Copies of all VAT invoices they have issued;
 - All VAT invoices they have received.

(Reference to the relevant legislation is at Annex C).

3.9 The penalty for failure to keep such records is an amount (per record) equal to the 'prescribed rate' multiplied by the number of days on which the failure continues (up to a maximum of 100 days) or £50, whichever is greater.

3.10 The prescribed rate is:

- £5, if there has been no previous occasion of failure in that period.
- £10, if there has been only one such failure in that period, and
- £15, in all other cases.

4. Issues to be considered

What constitutes compliance with record keeping obligations?

- 4.1 HMRC has published (in March 2010) a fact sheet – ‘*Keeping records for business - what you need to know*’. This fact sheet is at Appendix D
- 4.2 Whilst the law sets out what records need to be kept, the precise format of those records is not prescribed. This ensures that the records kept can fit the nature and size of the business.
- 4.3 Some may think that a lack of accountancy and/or tax knowledge puts fulfilling the statutory record keeping obligations beyond the skills and abilities of some who run small businesses below the VAT registration threshold. This is not so: the test of whether business records fulfil the statutory requirements for direct taxes is essentially one of whether the records kept are ‘capable’ of being turned into a correct and complete return of tax liability. Neither a lack technical ability nor a lack of ‘neatness’ is necessarily a bar to fulfilling those obligations. This might best be illustrated by some simple examples:
- Trader ‘A’ issues a paper invoice for every job he does, keeping a copy for himself. He obtains a receipt for every business expense he incurs. Day by day he puts all of those bits of paper into a box to be sorted out later.
 - Trader ‘B’ has a similar system but is not technically competent in tax matters. Whilst the nature of his expenditures is plain from the receipts, he has no clear concept of the difference between capital and revenue expenditure, nor what counts as deductible business expenditure and non-deductible personal expenditure. As a result, he puts the receipts for all his expenditure into his box on the basis that his accountant will sort out what is deductible and what is not.
 - Trader ‘C’ has a sophisticated record book into which he neatly enters details of business income and business expenditure, accurately separating capital and revenue. However he records only **some** of his business takings and only **some** of their business expenditure.
- 4.4 In the examples above, traders ‘A’ and ‘B’ have both kept records that include all the details required by law. Despite the unsophisticated format of their records, and any lack of technical competence, the business records of both ‘A’ and ‘B’ are capable of being turned into a correct and complete return of taxable business profit. They will both have fulfilled their statutory obligations.
- 4.5 In contrast (and despite a more sophisticated record keeping regime) trader ‘C’ will have failed to fulfil the statutory record keeping requirements; his records are not capable of being turned into a correct and complete return of taxable business profit.
- 4.6 The above examples are illustrative; it is not being suggested that every trader must give every customer a sales invoice and retain a copy, or obtain a receipt for every minor item of business expenditure, (although this is an ideal arrangement). And something more sophisticated than a box of invoices and receipts is certainly desirable. The ‘*Keeping records for business – what you need to know*’ factsheet (see Annexe D) sets out the types of records that might usefully be kept. But for many small businesses, an accurate record of business ‘money in’ and business ‘money out’, in whatever form, – showing the matters in respect of which the money was received and expended – will be all that is needed to fulfil the record keeping obligations that the law requires. Good record keeping – sufficient to fulfil legal obligations – is essentially about ‘diligence’, not technical ability.

- 4.7 What we are concerned with here, and what a Business Records Check will focus on, is not form or want of form, but whether the prime business records are complete and accurate in the sense that:
- i). there is a clear record of all business 'money in' and 'money out', and
 - ii). the records allow an accurate interpretation to be made as to the nature of those receipts and expenditures.

Articulating the record keeping requirement

- 4.8 No change to the existing statutory record keeping requirements (in primary or secondary legislation) is proposed in relation to Business Records Checks. So the issue here is how best to articulate the existing requirements.
- 4.9 The '*Keeping records for business - what you need to know*' fact sheet (launched in October 2010) is designed to help and may already fully fit the bill of articulating what is required in a way that everyone can understand.

Question 1. The record keeping requirements - Do we need to go further than what is available from the factsheet; and if so, what else is needed?

A possible framework for responding to different degrees of failure to comply with the statutory record keeping requirements

- 4.10 We will need to set out HMRC's responses to record keeping failures so that the position is clear to:
- HMRC staff
 - Agents
 - SMEs
 - Tribunals.

- 4.11 Appropriate responses might be:

Good Records

- Documented acknowledgement of the perceived adequacy.
- A potentially lower risk of future compliance checks.

Minor record keeping failures

- Documented explanation to the trader of the findings of the Business Records Check and of the actions expected to be taken to rectify the position going forward.
- A slightly increased risk of future compliance checks.

No records or significant record keeping failures

- Documented explanation to the trader of the findings of the Business Records Check and of the actions expected to be taken to rectify the position going forward.
- The award of a penalty (see below).
- The likelihood of a future Business Records Check (where the penalty for continued and significant record keeping failures would be £X+) and/or an increased likelihood of other compliance interventions.

- 4.12 In previous engagement with a working group of CRF representatives the consensus was that whilst minor discrepancies should not warrant a penalty, the level at which

record keeping failures go beyond minor and become significant will be a matter of professional judgement, and not a 'tick box'-style evaluation.

- 4.13 Guidelines will be drawn up, but one proposition is that a failure to record an amount of business 'money in' (or out) above value £'V', or repeated failures (of 'N' number of times) to record amounts of whatever value, will be deemed significant.

Question 2. Categories of failure and responses - Are the categories and responses at 4.11 above the right categories and the right responses? If not, what should the categories and/or responses be?

Question 3. Significant failures – Is the outline proposition at 4.13 above a reasonable basis for drawing up guidelines as to what should constitute significant record keeping failure? And if not:

- **Why not? And**
- **What alternative basis would be reasonable for drawing up guidelines as to what should constitute significant record keeping failure?**

(This matter in particular is one that will benefit from discussion at the proposed February 2011 workshops)

The penalty tariff

- 4.14 The penalty structure needs to serve the objective of bringing about a widespread improvement in record keeping across the population of the roughly 2 million SMEs whose records currently fall below standard. It needs to encourage those who might otherwise fall significantly short in their record keeping obligations to improve their record keeping, and not just those who are subject to a pre-return records check.
- 4.15 There will be those for whom keeping proper records is an unwelcome chore that they would rather avoid. And for some the potential penalty, or indeed an actual penalty, if set too low might be seen as a price worth paying for 'not having to bother' with good record keeping. To be effective, the minimum penalty has to be in an amount sufficient to encourage compliance with the record keeping requirements in the vast majority of cases.
- 4.16 Because there are separate statutory record keeping obligations for different taxes (for example, Income Tax and VAT), with separate penalties for failure to comply with those obligations, it is possible for a trader to fail to comply with more than one record keeping requirement. Where obligations overlap so that a failure to comply with one record keeping obligation inevitably constitutes a failure to comply with another record keeping obligation, the intention is not to penalise both failures, but instead that whichever penalty is the greater should be applied.

Record keeping penalties - Direct tax

- 4.17 Unlike the penalties for record keeping failures in relation to VAT which are in fixed amounts; the penalty applying for record keeping failures in relation to Income Tax and Corporation Tax is an amount 'up to' a maximum of £3,000. But unless the maximum penalty was to be charged in every case, and that is **not** the proposition, it will be necessary to devise some sort of tariff.

- 4.18 The nature and/or frequency of record keeping failures may need to be considered in deciding whether failures are minor or significant. There is no obvious link to a 'value' reference point such as the potential amount of tax at risk or the potential turnover for the period covered by the records because pre-return these will be an unknown.
- 4.19 One solution might be a straight – '£X for a first offence fits all' – approach. But it would mean that the penalty amount charged to (say) a sole trader with significantly inadequate records would be the same as that charged to a business employing (say) 20 people with significantly inadequate records. It could be argued that the record-keeping obligation is the same for everyone, like the filing obligation, and that therefore the penalty should be the same for everyone.

Record keeping penalties – VAT

- 4.20 Because the record keeping penalties for VAT are set in fixed amounts, there is no need to consider an appropriate tariff. However, where a trader has failed to keep the required records it has been HMRC practice not to impose this penalty in the first instance but to warn the trader and safeguard the future position by serving a formal 'Notice of Requirement' to keep specified records. So currently, penalties will be imposed only if there is a failure to comply with the 'Notice'.
- 4.21 This current practice effectively amounts to a 'free go'. To deter record keeping failure from the outset, and to be consistent with the proposition for IT and CT record keeping failures, the proposition is that the VAT penalties should be applied in the first instance that significant record keeping failures are identified.

Question 4. Penalty tariff – In relation to direct taxes, what amount of penalty is needed at a minimum (within the £3,000 maximum) to encourage those with significantly poor records to bring their record keeping up to standard, and to deter a potential 'for £X it is worth not having to bother' mentality?

Question 5. Penalty tariff - Should the penalty tariff for significant record keeping failures be the same for all? If not, on what criteria might a workable penalty differential [within the statutory maximum of £3,000] be based?

Interaction with Schedule 24 Finance Act 2007 penalties for inaccuracies in returns

- 4.22 The statutory obligations:
- to maintain records capable of enabling a correct and complete return to be made, and
 - to deliver a correct and complete return,
- are separate obligations, each with a separate penalty regime for failures to comply with those obligations.
- 4.23 As mentioned earlier in relation to direct taxes, before HMRC had the power to examine records other than in the course of an enquiry into a return, the policy position was to effectively roll-up any penalty for record keeping failure with the penalty for making an incorrect return [that is, by adjusting the measure of abatement]. But the new (Schedule 24 FA 1997) penalties for inaccurate returns do not allow for this.

- 4.24 A lawful and fair penalty response to significant record keeping failures must be for that response to be determined by the degree of failure to maintain records and not the point in time, or the mechanism through which, that failure is recognised.
- 4.25 As a result, the circumstances in which HMRC must impose a penalty where there has been a significant record keeping failure might include:
- As a result of a Business Records Check.
 - Following an enquiry into a direct tax return which *does not* show an inaccuracy in a return.
 - Following an enquiry into a direct tax return which *does* show an inaccuracy in a return, (and in addition to any Schedule 24 FA 2007 penalty for an inaccurate return, whether or not collection of the Schedule 24 penalty is suspended).
 - Following a VAT audit in which no VAT underpayment or over-claim is identified.
 - Following a VAT audit in which VAT is shown to have been understated or over-claimed, (and in addition to any Schedule 24 FA 2007 penalty for an inaccurate return, whether or not collection of the Schedule 24 penalty is suspended).
- 4.26 There is no statutory power to suspend collection of a penalty for a record keeping failure. A similar (though not identical) effect might be achieved by not imposing the record keeping penalties for a 'first offences', but instead applying penalties only where a follow-up Business Records Check shows there were continuing and significant record keeping failures.
- 4.27 However, such a policy would undermine the key objective of achieving a widespread improvement in record keeping across the population of the roughly 2 million SMEs whose records currently fall below standard. A policy of not charging a penalty for an initial finding of significant record keeping failure would effectively give everyone a 'free go', and risk creating the perception that there is no need to change behaviour in relation to poor record keeping unless and until one has been caught out at least once.

Question 6. How can the interaction between the penalties for the very separate offences of failure to maintain statutory records, and making an inaccurate return best be managed and articulated?

Selection of cases, and the operation of Business Records Checks

- 4.28 We plan to select cases for a Business Records Check on the basis of risk assessment, focusing on businesses that have features associated with poor record keeping. However, a small proportion might be selected at random to verify the worth of Business Records Checks and to help improve the risk assessment criteria.
- 4.29 The corrective impact of Business Records Checks could be increased, and poor record keepers further encouraged bringing their records up to standard, through leverage. For example; when we identify a business population as having the features associated with poor record keeping, we could write individually to that population explaining:
- that they are in a category at risk of having poor business records;
 - that HMRC will be conducting checks of the business records of many of those in that population, and
 - that they are, therefore, more likely to be chosen for such a check in the coming year.
- 4.30 If as a result, those with poor records take steps to improve their record keeping (whether or not they are subsequently selected for a Business Records Check), there will potentially be an advantage all round. Records will be improved so that the likelihood of

tax losses resulting from poor records will be reduced; and they will have avoided a potential penalty.

- 4.31 It is recognised that to be most effective:
- the chosen population to leverage must be a coherent population (likely to hear about checks being carried out into others in that population), and
 - not so large that the increased likelihood of being selected for Business Records Check is undermined.

Question 7. Leverage - Does this seem a good way to increase the desired change in behaviour, and if not why not?

Question 8. Leverage - Are there any other or better ways to increase the desired change in behaviour?

Location, Duration and Extent of a Business Records Check

- 4.32 The law (Schedule 36 of Finance Act 2008) allows an officer of HMRC to enter a person's business premises and inspect statutory business records, where that is reasonably required for the purposes of checking that person's tax position. Any premises on which the statutory records are kept are, for these purposes, 'business premises', (but this power does not cover entry to any part of premises used solely as a dwelling).
- 4.33 It is intended that Business Records Checks would be pre-arranged with at least 7 days notice. Traders and their agents will be made aware in advance and appointments made. Typically, a Business Records Check will consider a 'sample' of the records kept (not the records in totality), to check that a full and clear record is being kept of all business 'money in' and 'money out', and that the records allow an accurate interpretation to be made as to the nature of those receipts and expenditures.
- 4.34 The procedures and safeguards that will govern Business Records Check visits are set out in Compliance Checks Factsheet 3 which is at Annexe E.

HMRC staff training

- 4.35 All HMRC staff undertaking Business Records Checks will have undergone appropriate training. The workshops scheduled to take place in February 2011 (see page 2) will be an opportunity to consider this matter further.

Publicity, awareness, and time to adjust

- 4.36 BRCs can bring about a general improvement in the record keeping of those in the SME sector whose records are currently sub-standard only if:
- they are aware of their record keeping obligations;
 - they are aware of:
 - the potential for being subject to a Business Records Check, and
 - the perceived (chiefly penalty) consequences of that eventuality are sufficient to prompt a change in the record keeping behaviour of those who would otherwise not do so.
- 4.37 It is **not** intended to begin a programme of Business Records Checks with penalties for significant record keeping failures without first providing for a period of adjustment; that is, allowing a reasonable period for all to bring their record keeping up to standard,

with penalties being imposed only for significant record keeping failures occurring after the end of that period.

4.38 The vast majority of SMEs are represented by tax agents who potentially can play a key role in conveying these messages. But alternative publicity mechanisms will be needed, especially for those who are unrepresented.

4.39 Those businesses with tax agents may want to discuss their record keeping with their agents, and agents may want to alert clients individually to these changes. Those without agents may decide to seek professional help to ensure that their record keeping is satisfactory. Consequently, the potential initial workload for agents is a factor to be considered in deciding the appropriate period of time to be allowed for record keeping to be brought up to scratch.

Question 9. Time to adjust - What will constitute a reasonable period of time to allow those whose record keeping is sub-standard to make the necessary changes to their record keeping? And why is a shorter period unreasonable?

4.40 Suppose it was decided that a period of 'X' months was a reasonable period to allow record keeping to be brought up to standard. That would not necessarily rule out BRCs being conducted during that period of adjustment, but without the penalties being imposed. It could be helpful to HMRC (for example, in relation to training) and to agents alike if BRCs were to begin in this 'trial' way so that any remaining issues and wrinkles might be ironed out before BRCs with penalties for significant records keeping failures begin.

Question 10. Time to adjust – Would it be useful to begin BRCs on this 'trial' basis?

4.41 Agents will play a key role in making their clients – the vast majority of the SME population – aware of these changes and what they will mean for their clients. But there will also be a need for a more general means of publicising these changes.

Question 11. Publicity and awareness - How might HMRC best work with agents in bringing details of these changes to their clients?

Question 12. Publicity and awareness - How might HMRC best bring details of these changes to the wider audience, especially unrepresented SMEs?

Other issues

4.42 As stated at the outset, this consultation is **not** concerned with whether there should be a statutory record keeping requirement; whether there should be penalties for record keeping failures, or whether HMRC should have a power to check business records and impose penalties for record keeping failures. These are already in place and have been consulted on previously.

- 4.43 Rather, this consultation is concerned with how best to implement a programme of Business Records Checks to achieve an improvement in the standard of record keeping across the SME population.
- 4.44 We would be pleased to hear of any other issues concerning how best to implement a programme of Business Records Checks to achieve an improvement in the standard of record keeping across the SME population.

Question 13. Other issues - Are there issues other than those referred to above that ought to be taken account of, and if so, what are they?

Impact Assessment

- 4.45 Business Records Checks impose no new record keeping burdens on businesses; the obligations to maintain business records already exist and will be unchanged. What will be new are the checks themselves.

Question 14. Impact assessment - Do you have any comments on the assessment of compliance costs?

5. Summary of Consultation Questions

Question 1. The record keeping requirements - Do we need to go further than what is available from the factsheet and the evaluation tool; and if so, what else is needed?

Question 2. Categories of failure and responses - Are the categories and responses at 4.11 above the right categories and the right responses? If not, what should the categories and/or responses be?

Question 3. Significant failures – Is the outline proposition at 4.13 above a reasonable basis for drawing up guidelines as to what should constitute significant record keeping failure? And if not:

Why not? And

What alternative basis would be reasonable for drawing up guidelines as to what should constitute significant record keeping failure?

Question 4. Penalty tariff - What amount of penalty is needed at a minimum to encourage those with significantly poor records to bring their record keeping up to standard, and to deter a potential 'for £X its worth it' mentality?

Question 5. Penalty tariff - Should the penalty tariff for significant record keeping failures be the same for all? If not, on what criteria might a workable penalty differential [within the statutory maximum of £3,000] be based?

Question 6. How can the interaction between the penalties for the very separate offences of failure to maintain statutory records, and making an inaccurate return best be managed and articulated?

Question 7. Leverage - Does this seem a good way to encourage the desired change in behaviour, and if not why not?

Question 8. Leverage - Are there any other or better ways to encourage the desired change in behaviour?

Question 9. Time to adjust - What will constitute a reasonable period of time to allow those whose record keeping is sub-standard to make the necessary changes to their record keeping?

Question 10. Time to adjust – Would it be useful to begin BRCs on this 'test and learn' basis?

Question 11. Publicity and awareness - How might HMRC best work with agents in bringing details of these changes to their clients?

Question 12. Publicity and awareness - How might HMRC best bring details of these changes to the wider audience, especially unrepresented SMEs?

Question 13. Other issues - Are there issues other than those referred to above that ought to be taken into account, and if so, what are they?

Question 14. Impact assessment - Do you have any comments on the assessment of compliance costs?

Annex A: The Code of Practice on Consultation

About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Richard Bowyer, Consultation Coordinator, HMRC Better Regulation and Policy Team
020 7147 0062 or email HMRC-consultation.co-ordinator@hmrc.gsi.gov.uk

Annex B: Link to Impact Assessment

[Impact Assessment of Business Records Checks \(PDF 173K\)](#)

Annexe C: Relevant legislation

Section 12B Taxes Management Act 1970 - Records to be kept for the purposes of returns

Paragraphs 21 and 23 of Schedule 18 Finance Act 1988 – Duty to keep and preserve records

Schedule 11 (paragraph 6) Value Added Tax 1994 - Administration, collection and enforcement

Paragraph 31 of Value Added Tax Regulations 1995

Schedule 36 Finance Act 2008 – Information and Inspection powers

Part 2 Powers to Inspect [Premises and Other Property]

Annex D:

Link to: ['Keeping records for business - what you need to know'](#) factsheet

Annex E:

Link to: [Compliance Checks factsheet 3](#)