



# SSRO

Single Source  
Regulations Office

Guidance on determining  
the amount of a penalty

27.03.15



---

# Contents

<b>Introduction</b>	<b>2</b>
1. About this Guidance	2
2. Application of this Guidance	2
<b>Determining the amount of penalty</b>	<b>3</b>
3. Factors to determine amount of penalty	3
4. Factors tending to decrease the level of any penalty	3
5. Repeated and persistent offence	4
6. Final amount of penalty	4
7. Discount for early settlement	4
8. Transitional arrangements	4
9. Public reporting of penalty notice	4
10. Opinions and determination	5
<b>Appendix A: Maximum Penalty Amounts</b>	<b>6</b>

# Introduction

## 1. About this Guidance

- 1.1 Sections 33(3) and (4) of the Defence Reform Act (the “Act”) provide for the publication by the SSRO of guidance on determining the amount of a penalty, stating that:

*In determining the amount of a penalty, the Secretary of State must have regard to guidance issued by the SSRO.*

*The SSRO must publish guidance issued under subsection (3) [determining the amount of penalty] in such a manner as it thinks appropriate.*

- 1.2 This document does not provide guidance on any cases where the amount of penalty is to be calculated as if the contravention were a breach of contract (and is to be calculated in accordance with the general law of contract having effect in England and Wales).

## 2. Application of this Guidance

- 2.1 This is statutory guidance issued by the SSRO under Section 33(3) of the Act. It applies to all qualifying defence contracts and qualifying sub-contracts.
- 2.2 The Secretary of State may issue a person a penalty notice, where the person has contravened Section 31 and:
- (i) has failed, without reasonable excuse, to take the steps specified in a compliance notice issued by the Secretary of State, or
  - (ii) the Secretary of State does not consider there are steps that can be taken to remedy the contravention.
- 2.3 The Secretary of State must have regard to this guidance when determining the amount of a penalty.

# Determining the amount of penalty

## 3. Factors to determine amount of penalty

3.1 When issuing a penalty notice, the Secretary of State should consider all the circumstances in order to determine a fair and proportionate penalty. The central objective of imposing a penalty should be deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the contravention.

3.2 The Secretary of State must have regard to the following factors when determining the amount of penalty:

1. the impact of the contravention:

- (a) what harm has the contravention caused the Secretary of State;
- (b) what benefit has the person gained with the contravention;
- (c) duration of the contravention; and

2. the nature of the contravention:

- (a) was the contravention deliberate (was the person aware that their action or inaction would or could result in a contravention);
- (b) was the contravention reckless;
- (c) on occasions when a report was not fully completed, was the report materially incomplete; and

3. any previous penalty notices and general compliance history of the person:

- (a) is it the first contravention;
- (b) how frequently have previous contraventions occurred (repeated contraventions may lead to significantly increased penalties);
- (c) is the current contravention the same or similar to prior contravention(s); and

4. the size and turnover of the contractor; and

5. the value of the actual qualifying defence contract or qualifying sub-contract.

## 4. Factors tending to decrease the level of any penalty

4.1 After considering the factors stated above, the Secretary of State must also have regard to the following factors which may tend to decrease the level of a penalty amount:

1. has the person taken steps to mitigate and prevent the contravention and future contraventions; and

2. the extent and timeliness of any steps taken to end the contravention in question, and any steps taken to mitigate the consequences of the contravention; and

3. has the person co-operated with the Secretary of State; and

4. does the person have a reasonable excuse for the contravention.

**5. Repeated and persistent contraventions**

5.1 As specified in Regulation 50 (3), in a case where

(a) *the Secretary of State gives a person a penalty notice in respect of a contravention within section 31(3)(a)(ii), (failure to comply with reporting requirements), and*

(b) *within the 12 months immediately preceding the date on which the Secretary of State gives the person that penalty notice, at least five other penalty notices for contraventions within section 31(3)(a)(ii) have been given to the person (or any person or persons associated with that person),*

*the amount specified for the purposes of section 33(1) (maximum penalty) is the amount prescribed for that contravention, plus 20% of that amount.*

5.2 Any penalty notice which has been cancelled by the SSRO as a result of a determination shall be disregarded when determining a persistent contravention.

**6. Final amount of penalty**

6.1 Having had regard to any representations the person may wish to make and having considered the factors listed above (to the extent that they are relevant) and any other circumstances relevant to that particular case, the Secretary of State should determine a fair and proportionate penalty. In doing so he will ensure that the amount does not exceed the maximum penalty for the particular type of contravention.

6.2 The final amount of the penalty must be stated in the penalty notice.

**7. Discount for early settlement**

7.1 For failures to comply with the duty to keep accounting and other records, in contravention of 31(3) (a)(i), the penalty amount may be reduced if the person satisfactorily addresses the contravention within the time specified in Table 1.

Table 1

Number of days after penalty notice	Per cent of full penalty payable
Within 30 days	25
Within 90 days	50

**8. Transitional arrangement**

8.1 The SSRO recognise the significant changes resulting from the Act, Regulations and Guidance. Upon referral to the SSRO, penalty amounts may be adjusted to reflect these transitional issues and the SSRO will consider the following such factors in their determination:

- (a) efforts made by persons to comply; and
- (b) familiarity with the new legislation, regulations and guidance.

8.2 This transitional arrangement will last for a period of 12 months beginning on 1 April 2015.

**9. Public reporting of penalty notice**

9.1 The SSRO will publish a compliance report each year that will specify persons who have been issued with penalty notices.

9.2 A person's name will not be published in the compliance report if the SSRO has notified the contractor that their qualifying

defence contract may benefit from the transitional period or if a determination is outstanding.

## 10. Determinations

- 10.1 Matters in respect of which the contractor may apply to the SSRO for a determination are:
- (a) whether the person has contravened section 31 of the Act or failed to take the steps specified in a compliance notice (or both);
  - (b) whether the person had a reasonable excuse for contravening section 31 of the Act or failing to take the steps specified in a compliance notice (or both); and
  - (c) the amount of the penalty.
- 10.2 When a person applies to the SSRO for a determination of a matter mentioned in the penalty notice is not payable until a determination has been made.
- 10.3 In determining the matter, the SSRO may:
- (a) substitute its own decision for any decision of the Secretary of State;
  - (b) vary the amount of the penalty;
  - (c) cancel the penalty notice; and
  - (d) state the date by which the penalty must be paid (unless the penalty notice is cancelled).
- 10.4 The SSRO's determination is final.
- 10.5 For further information, please refer to "Guidance on Referral Procedures to the SSRO under the Defence Reform Act 2014 and the Single Source Contract Regulations 2014".

# Appendix A: Maximum Penalty Amounts

The maximum penalties are specified in Regulation 50. The amounts specified in the regulations are the upper limits and not an indication that every penalty issued should be set at that amount.

The maximum financial penalties which can be issued are stated below:

1. For the following breaches of record-keeping and reporting duties:
  - (a) failure to keep relevant records;
  - (b) refusal to allow the Secretary of State to examine relevant records;
  - (c) refusal to provide further information or explanation related to relevant records to the Secretary of State;
  - (d) failure to make available a copy of any specified relevant records (in hard or electronic form) for the purpose of enabling those records to be examined.

Value of qualifying defence contract	Maximum Penalty
Less than or equal to £50m	£20,000
>£50m but ≤£200m	£100,000
>£200m but ≤£500m	£250,000
>£500m but ≤£1bn	£375,000
>£1bn	£500,000

2. In cases where a person has failed to assess or failed to correctly assess whether a sub-contract is a qualifying sub-contract or has failed to notify the relevant parties prior to signing the sub-contract:

Value of qualifying defence contract	Maximum Penalty
Less than or equal to £50m	£50,000
>£50m but ≤£200m	£250,000
>£200m but ≤£500m	£500,000
>£500m but ≤£1bn	£750,000
>£1bn	£1,000,000

3. In cases where a person has failed to submit by the relevant due date the following reports required by section 24 the Act and Part 5 of the Regulations:
- (a) Contract reporting plan;
  - (b) Contract notification report
  - (c) Quarterly contract report;
  - (d) Interim contract report
  - (e) Contract completion report
  - (f) Contract costs statement
  - (g) On-demand contract report

Value of qualifying defence contract	Maximum Penalty
Less than or equal to £50m	£20,000
>£50m but ≤£200m	£100,000
>£200m but ≤£500m	£250,000
>£500m but ≤£1bn	£375,000
>£1bn	£500,000

4. In cases where a person has failed to submit by the relevant due date the following reports required by section 25 of the Act and Part 6 of the Regulations:
- (a) Actual rates claim report
  - (b) QBU actual cost analysis report
  - (c) Estimated rates claim report
  - (d) QBU estimated cost analysis report
  - (e) Rates comparison report
  - (f) Strategic industry capacity report
  - (g) Small or medium enterprises (“SME”) report

Value of all qualifying defence contracts and qualifying sub-contracts to which the person who has been given the penalty notice, or any person associated with that person, is party	Maximum Penalty
Less than or equal to £50m	£20,000
>£50m but ≤£200m	£100,000
>£200m but ≤£500m	£250,000
>£500m but ≤£1bn	£375,000
>£1bn	£500,000

5. In cases for failures to submit a completed contract pricing statement required under Regulation 23 and the estimated rates agreement pricing statement required under Regulation 38 in time:

Value of qualifying defence contract	Maximum Penalty
Less than or equal to £50m	£50,000
>£50m but ≤£200m	£250,000
>£200m but ≤£500m	£500,000
>£500m but ≤£1bn	£750,000
>£1bn	£1,000,000

6. If a penalty notice is issued in relation to a contravention concerning the submission of misleading reports under section 31(3)(b) of the Act or in relation to a failure to notify the Secretary of State of the occurrence or likely occurrence of a relevant event, circumstance, or information under section 31(3)(c) of the Act, then the amount of the penalty is to be calculated as if the contravention were a breach of contract (and is to be calculated in accordance with the general law of contract having effect in England and Wales).



the 1990s, the number of people with a university degree has increased in all countries, but the increase has been most dramatic in the United States.

There are two reasons why the increase in university graduates is important. First, it is a reflection of the fact that the demand for university graduates has increased. Second, it is a reflection of the fact that the supply of university graduates has increased. The increase in the supply of university graduates is a result of the fact that the number of people who attend university has increased.

The increase in the number of people who attend university is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased.

The increase in the number of people who are able to attend university is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased.

The increase in the number of people who are able to attend university is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased.

The increase in the number of people who are able to attend university is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased.

The increase in the number of people who are able to attend university is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased.

The increase in the number of people who are able to attend university is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased.

The increase in the number of people who are able to attend university is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased.

The increase in the number of people who are able to attend university is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased. This is a result of the fact that the number of people who are able to attend university has increased.