

Fraud Prevention Header Data Compliance and Sanctions Guidelines

Introduction

1. The purpose of this guidance is to explain what will happen if a developer is assessed by HMRC to be non-compliant with their legal obligations to provide fraud prevention header data as outlined in *The Delivery of Tax Information through Software (Ancillary Metadata) Regulations 2019*. Among other things, the guidance sets out what sanctions may be applied and the action a developer can take if a sanction is applied.
2. For the purposes of this guidance, “developer” shall mean the software provider.
3. This guidance is applicable to all developers using HMRC APIs where there is a legal requirement to provide fraud prevention header data.
4. Developers may want to share this guidance with users of their products for transparency and information as this document will underpin HMRC’s endeavour in ensuring compliance and protecting their customers.
5. HMRC supports developers to become compliant. For example, HMRC:
 - allows developers a 6-month period to accommodate new fraud headers. Thereafter, we will monitor patterns of non-compliance
 - will work with developers to solve issues wherever possible
 - will assist with any queries or concerns a developer may have
 - provides a testing/Sandbox environment for Developers to test their application’s compliance to published rules
 - has provided a test API specifically for the fraud prevention header data requirements.
 - will provide, where a developer is not fully compliant with the provision of fraud headers, detailed reports measuring a developer’s performance against required specification.
6. From 14 December 2020, it has become HMRC policy to only grant developer access to MTD APIs, if their application is compliant with fraud prevention header requirements and HMRC is satisfied as to the level of accuracy of the data (i.e. the extent to which it is heuristically correct).

Background

7. The HMRC third party tax software API strategyⁱ outlines how HMRC will work with software developers to bring new products to the market to benefit both

our customers and HMRC. HMRC also promotes an 'API first' approach for businesses and agents. Building Application Programming Interface (API) with richer capabilities; allowing existing developers to do more and encouraging new types of intermediaries into the tax software market.

8. This strategy also seeks to reduce error closer to the point of transaction and use APIs to help our customers get it right first time. Through developing APIs that help make interactions straightforward for users of third-party software, enabling third party applications to work seamlessly with HMRC systems. Ultimately, this strategy aims to help make third party software more attractive for customers and reduce the dependency on HMRC products and support.
9. HMRC has a long and productive relationship working with software developers and we are committed to working in partnership to achieve our common goals as part of our API Strategy. But we are also committed to protecting taxpayers' confidential data from criminals and fraudsters. Transaction monitoring refers to data collected through electronic communications which HMRC uses to protect customer data and guard against fraud. HMRC does this in line with National Cyber Security Centre and Cabinet Office recommended guidance, alongside industry good practice.
10. Fraud prevention "header information" is a list of metadata requirements which developers need to build into their software to capture data to support fraud prevention. This data is exchanged with HMRC as part of the API transaction between software and HMRC. HMRC uses this data to support identification of potential fraud and criminal attacks – this process is known as transaction monitoring.
11. The detailed requirements on developers are set out in *The Delivery of Tax Information through Software (Ancillary Metadata) Regulations 2019*ⁱⁱ and supporting Commissioners Directionsⁱⁱⁱ. These place a legal obligation on software developers to ensure their API enabled products capture and electronically transmit to HMRC all available fraud header information along with taxation information that it relates to.
12. HMRC accepts that a software developer will not be considered to be non-compliant with the above legislation in the following scenarios:
 - where a developer has made available a compliant version of their software to all its users but one or more users has not deployed that 'upgrade'
 - where a user chooses to 'downgrade' or otherwise customise their software in such a way that it cannot capture or transmit the required header information

Sanctions Process

13. HMRC has put in place processes to manage developers that do not comply with fraud prevention header requirements. This process is comprised of the following steps:

Step 1	Formal notification of non-compliance issued to developer
Step 2 (Sanction 1)	Initial sanctions applied to developer
Step 3 (Sanction 2)	Financial penalty (up to £3,000)
Step 4 (Sanction 3)	Developer removed from HMRC API Platform

14. These steps are further illustrated in Appendix A.

15. HMRC will write to the developer's company secretary (or equivalent company officer) regarding non-compliance.

Step 1: Formal Notice of Non-Compliance issued

16. Before reaching this point HMRC will have contacted the developer and discussed concerns around non-compliance of not receiving the required information. The Commissioners Directions detail what is required to ensure compliance. HMRC will have offered support to the developer if required.
17. This is the first step in the process and no sanction will be applied prior to this step. HMRC will write to the developer by way of a Formal Notification of Non-compliance, informing them that HMRC has assessed them to be non-compliant with their legal obligations to provide fraud prevention header information. The notice will warn the developer that sanctions may be imposed if non-compliance continues.
18. HMRC expects developers to undertake remedial action by including compliant headers in their software within 30 days of the date of the notification letter. Where developers are unable to do so, they should contact HMRC at txm_compliance@hmrc.gov.uk, to agree how they intend to attain compliance and the date by which they will be compliant, it will be for the developer to outline in detail why this is necessary and to provide a schedule for the work it will undertake to achieve compliance.

19. If an agreement towards compliance has not been reached within the 30 days, this will be taken as agreement with HMRC's decision that the developer has failed to comply and may be subject to further sanctions.
20. A developer can ask for a review of HMRC's decision contained in the formal notice of non-compliance. This is set out in legislation^{iv}. They must do so in writing within 30 days^{v[OB]} of receiving HMRC's decision by completing the dispute form found at Appendix B. The form will need to be sent to txm_compliance@hmrc.gov.uk.
21. When doing so the case should set out:
- the grounds of the review;
 - evidence to support the case; and
 - to whom the outcome of HMRC's review should be notified
- Each case will be reviewed on its merits, taking into account all the matters referred to by the developer when seeking the review. HMRC will notify the developer with the outcome of the review within 30 days or otherwise agreed with the developer. Triggering a review does not reset the time period stated in the 'formal notification letter' if the outcome of the review upholds the original decision.
22. The review will evaluate:
- HMRC's decision in light of both evidence as well as any relevant new information which HMRC has considered, and;
 - Whether the HMRC's decision and the decision-making process is in line with legal and technical guidance, policy and practice.
23. HMRC may agree to accept a late request for review if satisfied there is a reasonable excuse for not meeting the time limit and a request was made without unreasonable delay after the excuse ended.
24. HMRC will consider withdrawing the notice if:
- after examining evidence provided by the developer (as part of a formal request for a review or otherwise) HMRC is satisfied that the fraud prevention header requirements have been met; or,
 - the developer complies with the fraud header prevention requirements set by HMRC within the timeframe provided.
25. If the developers does not request a review against the decision outlined in the notice within 30 days, this will be taken as agreement with HMRC's decision and the decision will be recorded as final.
26. Continued non-compliance will trigger progression towards the imposition of initial sanctions - step 2. HMRC will expect the developer to fulfil all the requirements set out in the formal notice of non-compliance.

Step 2: Initial sanctions applied

27. As previously stated, the developer will be granted 30 days from the date the formal notice of non-compliance is issued before HMRC moves to this next step in the process. HMRC will monitor the effect of the notice and give the developer opportunity to engage with HMRC. Where a formal request for a review has been made following Step 1, then HMRC will not move to this step before the review has been concluded and the outcome notified to the developer.
28. If the developer's level of compliance remains substantially unchanged, then HMRC will take the following actions:
- exclude the developer from HMRC sponsored support events;
 - remove the developer's product(s) from the Software Choices pages on gov.uk; and,
 - block the developer from accessing new/additional MTD APIs.
29. HMRC will take the above actions despite engagement from a developer following the issue of the notice, if HMRC assesses the developer has no serious intention or plan to become compliant within a reasonable timeframe.

Step 3 (discretionary): Financial Penalty

30. After the Step 2 sanctions have been applied HMRC will continue to observe the developer for a further 3 months. If non-compliance continues or levels of compliance improve but not sufficiently, then the developer may be fined a £3,000 penalty, as set out in legislation^{vi}. A software developer shall not be liable to more than one penalty under Step 3, in relation to each of the software developer's programs in any period of 12 months. However, this step will be omitted if HMRC considers that applying a financial penalty is unlikely to be effective in the case of any one developer, for example because they have not responded to or improved their compliance following steps 1 and 2. In this case HMRC will proceed to step 4.
31. A developer has a statutory right of appeal^{vii} against the issuance of this penalty as set out under Schedule 36 of the Finance Act 2008^{viii}.
32. The procedure to be followed for the appeal is set out in Schedule 36 of the Finance Act 2008^{ix} and Part 5 of TMA 1970^x. This is described in more detail in the 'Appeals review and tribunal guidance'^{xi}. The guidance sets out the appeal and statutory review process. An appeal must be:
- done in writing;
 - within 30 days of receiving HMRC's decision; and,
 - presented to HMRC
33. The case should set out:
- the grounds of the appeal; and,
 - evidence to support the case.

34. HMRC will look at the information and evidence provided, considering each case on its merits, and will contact the developer for further details if necessary.
35. Subject to the above, HMRC undertakes to reach a decision in relation to the appeal and communicate this to the developer within 45 days.
36. If HMRC is satisfied, based on the information provided, that the developer has met the fraud header requirements, then the £3,000 fine will be retracted. If HMRC still consider that a penalty is due, we will explain our decision and our reasoning. After they have made an appeal, a developer can ask HMRC to review the penalty decision or continue the appeal by asking the tribunal to settle the matter.
37. A developer will not be able to notify their appeal to the tribunal if they have:
- accepted an offer of a review and the review has not yet ended; or,
 - asked for a review and the decision maker has written to them with HMRC's view of the matter and the review has not yet ended.
38. As set out under the Reviews and Appeals Section (ARTG 2400^{xii}) of the Appeals review and tribunal guidance following a review the developer will be able to notify their appeal to the tribunal:
- within 45 days of the date of HMRC's conclusion of review letter,
 - if HMRC did not complete the review within the agreed period any time from the day after the review period expired to 30 days from the date of the document telling the customer of the decision that the review is treated as having reached
39. Please note a review cannot take place after the appeal has been sent to the tribunal.

Step 4: Developer blocked from HMRC's API Platform

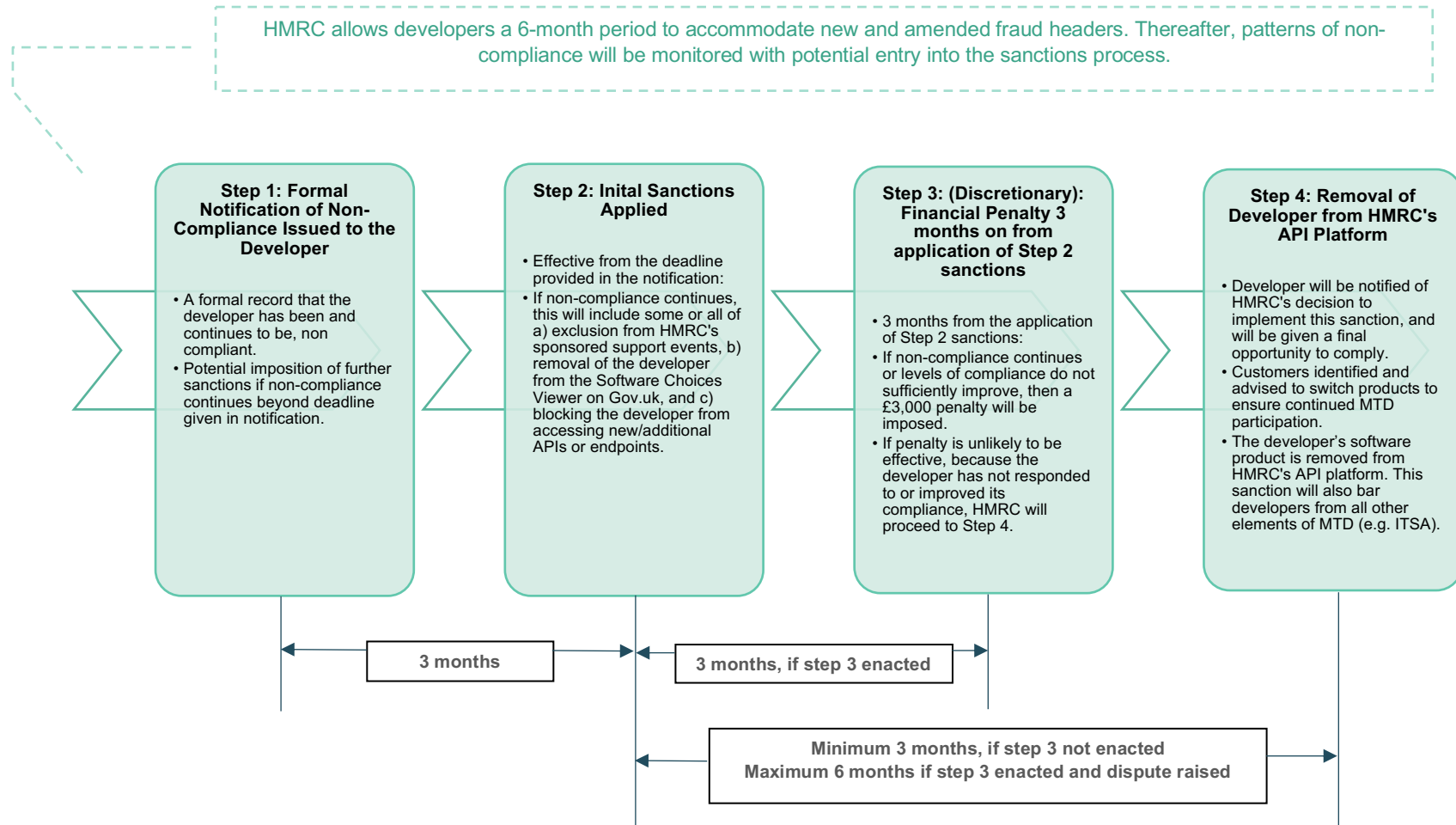
40. This is the final step in the sanctions and penalty process. At this point the developer will be very aware that HMRC regards their behaviour as non-compliant with their regulatory obligations and may have also been issued with a £3,000 penalty.
41. The developer will have been granted several opportunities to rectify the situation and/or resolve any disagreements with HMRC about the non-compliance (or their responsibility for it). HMRC will consider the final sanction in this process which will be to remove the developer from the HMRC API platform. This sanction will not be applied until all associated activities (e.g. reviews, appeals,) have been completed.
42. HMRC will continue to support the developer until a decision is reached about the sanction.

43. If HMRC's decision goes against the developer, then the developer's product subscription will be removed from MTD APIs. The developer will also be blocked from subscribing to any MTD APIs. If a developer is compliant for other services, but not another i.e. MTD VAT but not MTD ITSA, then sanctions will still apply.

Expectations

44. The software purchased from the developer by the end user results in a contract between both parties. HMRC strongly advises the developer to inform their customers about any decision taken by HMRC to impose any sanctions or penalties on the developer as this may result in the product not being able to connect or work with HMRC APIs.
45. HMRC expects developers to inform their customers of updates to their software products, including fraud prevention header updates, and encourage their adoption.
46. To the extent that HMRC holds information about the users of an affected product, HMRC will take steps to inform those customers should it become likely they will no longer be able to meet their obligations via that product and direct them to alternative filing channel.
47. HMRC will not be liable for any costs relating to the developer's software as a consequence of any sanctions or penalties issued by HMRC. This will be a matter between the developer and their customers.

Appendix A



Appendix B

Disputing HMRC's Decision

If wish request a review of HMRC's decision, then you should clearly set out the following information in the form below:

- reasons why HMRC should re-examine the decision; and,
- evidence to support your case.

Please complete the following form and send it to txm_compliance@hmrc.gov.uk.

Developer/Business Name	Click or tap here to enter text.
Developer/Business Address	Click or tap here to enter text.
Email Address	Click or tap here to enter text.
Contract telephone Number	Click or tap here to enter text.
Please confirm that you authorise HMRC to correspond by email with you or an agent acting on your behalf:	
Click or tap here to enter text.	

Please explain why you are disputing HMRC's decision
Click or tap here to enter text.

Set out the evidence you are supplying with this form to support your case

Click or tap here to enter text.

Declaration

I declare that the information provided on this form is true to the best of my knowledge and belief.

Signature:

Name of person completing this form

Click or tap here to enter text.

Status: *For example: Developer, Director, Sole Proprietor, Partner etc.*

Click or tap here to enter text.

Date of Dispute Application (DD MM YYYY)

Click to enter a date here

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- ⁱ HMRC third party tax software and API strategy, Published 1 September 2015: <https://www.gov.uk/government/publications/hmrc-third-party-tax-software-and-api-strategy>
- ⁱⁱ The Delivery of Tax Information through Software (Ancillary Metadata) Regulations 2019: <https://www.legislation.gov.uk/uksi/2019/360/contents/made>
- ⁱⁱⁱ Direction under regulation 2(2) of the Delivery of Tax Information through Software (Ancillary Metadata) Regulations 2019 (S.I. 2019/360): <https://www.gov.uk/government/publications/direction-under-regulation-22-of-the-delivery-of-tax-information-through-software-ancillary-metadata-regulations-2019-si-2019360>
- ^{iv} FA2008, Schedule 36, para 47 - 48: <https://www.legislation.gov.uk/ukpga/2008/9/schedule/36>
- ^v Appeals review and tribunal guidance: <https://www.gov.uk/hmrc-internal-manuals/appeals-reviews-and-tribunals-guidance>
- ^{vi} The Delivery of Tax Information through Software (Ancillary Metadata) Regulations 2019, Regulation 4: <https://www.legislation.gov.uk/uksi/2019/360/regulation/4/made>
- ^{vii} FA2008, Schedule 36, para 47: <https://www.legislation.gov.uk/ukpga/2008/9/schedule/36>
- ^{viii} FA2008, Schedule 36, para 45-49: <https://www.legislation.gov.uk/ukpga/2008/9/schedule/36>
- ^{ix} FA2008, Schedule 36, para 48: <https://www.legislation.gov.uk/ukpga/2008/9/schedule/36>
- ^x Taxes Management Act 1970, Part 5, Appeals and other proceedings: <https://www.legislation.gov.uk/ukpga/1970/9/part/V>
- ^{xi} Appeals review and tribunal guidance: <https://www.gov.uk/hmrc-internal-manuals/appeals-reviews-and-tribunals-guidance>
- ^{xii} Appeals review and tribunal guidance, ARTG 2400: <https://www.gov.uk/hmrc-internal-manuals/appeals-reviews-and-tribunals-guidance/artg2400>