



Guide

June 2026

# Schedule 36 Information Notices: A practical guide to HMRC's formal information powers

This guide explains when HMRC may use formal information powers under Schedule 36 Finance Act 2008, what happens if a notice is not complied with, and how taxpayers should approach appeal rights, statutory records, restrictions and time limits.

It is provided for general information only and does not constitute tax advice. Specific advice should be taken before acting on any Schedule 36 information notice or HMRC information request.



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# What taxpayers should know about formal information notices, penalties, appeal rights and the practical limits on HMRC requests.

## Why this guide matters

# 01

Anyone working closely with HMRC will be familiar with formal information requests issued under Schedule 36 of the Finance Act 2008. These notices give HMRC statutory powers to obtain information and documents from taxpayers or third parties.

In most cases, HMRC will start by requesting information informally, without the use of formal powers. However, if the requested information or documents are not provided following an informal request, HMRC may escalate to a Schedule 36 Information Notice. This is the most common scenario for formal notices, but not the only one.

There is no legislative need for HMRC to make informal requests before issuing a formal notice. If HMRC believes a taxpayer is unlikely to comply voluntarily, possibly due to previous instances of non-cooperation, they may proceed directly to a Schedule 36 notice.

Although rare, there are circumstances where a taxpayer may request a formal notice. This can provide a clear legal basis for disclosure, which is useful where there are concerns about confidentiality or liability. For example, if a company enters insolvency, the office holder may prefer to request a statutory notice before releasing information.

## At a glance

# 02

Schedule 36 gives HMRC statutory powers to require information and documents that are reasonably required for checking a taxpayer's tax position or collecting a tax debt.

HMRC will often start informally, but it does not have to do so before issuing a formal notice.

Failure to comply can lead to fixed, daily and, in serious cases, tax-gear penalties.

A taxpayer may be able to appeal the notice or specific requirements, but

appeal rights are limited where statutory records or tribunal-approved notices are involved.

A taxpayer may be able to appeal the notice or specific requirements, but appeal rights are limited where statutory records or tribunal-approved notices are involved.

Each request should be reviewed on its own merits; HMRC is not entitled to every item simply because it appears in a Schedule 36 notice.



## Legislative basis

# 03

The legislative basis for HMRC's information powers is set out at Schedule 36 Finance Act 2008 paragraph 1



*“An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”)—*

- (a) to provide information, or*
- (b) to produce a document,*

*if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position or for the purpose of collecting a tax debt of the taxpayer.”*

This provision gives HMRC broad powers to obtain information and documents directly from the taxpayer. Whilst Schedule 36 FA 2008 goes further into defining notices to other parties, this note focuses on taxpayer notices.

## Penalties for non-compliance

# 04

Failure to comply with a Schedule 36 Information Notice can lead to financial penalties. The penalty regime is set out in the legislation at Part 7.

- ▶ An initial penalty of £300 applies for failing to comply with a notice, under Paragraph 39 Schedule 36 FA 08.
- ▶ If documents remain outstanding after the initial penalty, HMRC can impose daily penalties of up to £60 per day from the date the initial penalty was issued, under Paragraph 40 Schedule 36 FA 08.
- ▶ In the most serious cases, HMRC may apply to the Upper Tribunal for a tax-gearred penalty.

Whilst this by itself may seem a modest figure, it is important to also consider the wider implications. Non-compliance can influence HMRC's view of behavior and may impact penalty assessments for errors in returns.

These penalties are reserved for cases of serious and sustained non-cooperation and are rarely used, but when applied, they can be substantial.

In the case of *Baxendale Walker v HMRC* [2024], HMRC sought tax geared penalties totaling £14,031,851. Whilst the penalty was successfully appealed in this case, this illustrates the potential level of exposure.



The fixed penalty may appear modest, but the wider behavioural and enquiry-management consequences can be more significant than the initial £300 penalty.

## Appeal rights and appeal process

### 05

The right of appeal is provided under Paragraph 29 of Schedule 36, Finance Act 2008. A taxpayer may appeal:

- ▶ Against the issue of the notice, or
- ▶ Against specific requirements within the notice.

However, there is no right of appeal against the inclusion of documents that form part of the taxpayer's statutory records. In such cases, the appeal can only challenge the issuing of the notice itself.

The exception to this would be where HMRC obtained tribunal approval before issuing the information notice, the taxpayer cannot appeal against the notice.

## Appeal process

A taxpayer has 30 days from the date of the notice to make an appeal. This should be made in writing to the officer who issued the notice.



In the first instance, the appeal will be considered by the officer who issued the notice. The appeal could be against the information notice in full or could be to dispute specific requests included therein.

If the officer upholds their decision, then the taxpayer can request an independent review, where a separate officer who was not involved in the case will review the appeal. This can be a useful approach, as the officer reviewing the appeal will not have taken a position, and may provide an impartial perspective on whether the documents are reasonably required.

There is also the right to appeal to the First Tier Tribunal. This can be done either following the appeal to the officer or following the independent review.

Where a taxpayer is disputing elements of an Information Notice, a reasonable approach which signals cooperation with HMRC, could be to appeal the notice while providing the requested information that is not under dispute.



Where only part of a notice is disputed, consider whether undisputed information can be provided while the disputed elements are appealed. This can help evidence cooperation without conceding points that remain in dispute.

## Power and possession

# 06

Under Schedule 36, a person is not required to produce a document if they can demonstrate that:

- ▶ The document is not in their possession, and
- ▶ They do not have the power to obtain it.

HMRC's guidance defines their interpretation of power and possession in the Compliance Handbook CH22120:

*“In their possession’ means that the person has physical control over the document. It does not matter who the document belongs to.*

*‘In their power’ means the person has the ability to get the document, or a copy of it, from whoever holds it.*

*This ability to get the document can be through*

- ▶ *a legal entitlement to make the person holding it give it to them, or*
- ▶ *the influence that the person has on the person who owns or possesses the document.”*

If neither possession nor power applies, HMRC cannot impose a penalty for failing to provide that document under a Schedule 36 notice.



## Statutory records

# 07

Statutory records includes all records required in order for a person to deliver a correct and complete tax return, including records of receipts and expenses and the matters in respect to which those receipts and expenses arose.

This is the definition provided at Section 12B TMA 1970 for individuals, and Paragraph 21 of Schedule 18 of the Finance Act 1998 for companies.

There is no right of appeal against the inclusion of statutory records within an information notice.



A statutory records / non-statutory records split can make the appeal position clearer and help focus the dispute on the parts of the notice that can properly be challenged.

## Restrictions on HMRC's powers

08

While HMRC's powers under Schedule 36 are extensive, there are restrictions on what can be requested in an Information Notice. The following list is not exhaustive but covers the some of the restrictions relevant to taxpayer notices.

- ▶ HMRC can only request records that are more than six years old if the notice has been issued with the agreement of an authorised officer.
- ▶ HMRC cannot require production of any document that relates to the conduct of a pending appeal. This includes documents created specifically for preparing or presenting a tax appeal.
- ▶ HMRC cannot request that a taxpayer produces personal records, which means any records concerned with an individual's physical, mental, spiritual or personal welfare.
- ▶ Documents covered by legal professional privilege must not be included in an Information Notice. Legal professional privilege applies to confidential communications between a lawyer and their client relating to legal advice. It is important to note that this protection does not extend to advice provided by accountants.

## The "reasonably required" test

09

The term "reasonably required" is central to HMRC's powers under Schedule 36, HMRC guidance explains that in their view:

*"Reasonably required" means getting the balance right between*

- ▶ the burden put on someone to provide the information or face an inspection, and
- ▶ how important the information or inspection is in deciding on the correct tax position."

It is important to note that HMRC are entitled to know the full facts and there is no requirement for them to have a suspicion that a return is incorrect, for the information to be reasonably required.

The definition of reasonably required has been considered in a variety of tax cases. Requests from HMRC cannot be too broadly drawn, to be considered as fishing expeditions by HMRC, or be for information that is not for the purpose of checking that taxpayer's tax position.

The starting point is that the request from HMRC must be for documents that a person acting reasonably would require for the purpose of checking the tax position.



There should be a clear connection between the information that is sought, and the underlying tax enquiry. The information does not necessarily need to lead to an assessment but should be relevant for understanding the tax position of the taxpayer.



HMRC can also not place an undue burden on the taxpayer, as this would not be seen as reasonable. Some of the requests from HMRC can be extensive, and where this is the case, they should provide more time or agree a rational approach with the taxpayer to addressing their request.

This could be agreeing to provide a sample initially, or agreeing a staggered approach to the request, to ensure that the request is not seen as unfair on the taxpayer.

HMRC should be able to explain why the information is required, and it is reasonable to ask them for this explanation on receipt of an Information Notice.

HMRC may be entitled to know the full facts, but the request still needs to be connected to the enquiry, proportionate and reasonably required.

## Information HMRC already possesses

### 10

If HMRC already possesses the information requested, it is not reasonable for them to ask for it again. This principle has been confirmed in case law.

In *Davies v HMRC* [2022] TC08619, Judge McKeever stated at paragraph 40:

*“If HMRC had the information already it would not be required nor would it be reasonable for HMRC to ask for it again.”*

It is therefore valid in scenarios where HMRC have previously received the requested documents, to appeal on the basis that the request is not reasonably required.

## Assessment position

### 11

When HMRC requests information, it is reasonable to consider whether they are able to act on that information.

- ▶ HMRC generally has four years from the end of the relevant return period to raise an assessment.
- ▶ In most scenarios, to go further back, HMRC must rely on extended time limits, which require evidence of careless or deliberate behaviour.

If HMRC are requesting information which relates to a period that pre-dates this, then they will need to be able to demonstrate that they have a reasonable position to raise an assessment. In most cases, this would be to demonstrate the suggestion of careless or deliberate behaviour.



This point has been considered in various cases.

In the case before the FTT of *The Barty Party Company Limited v HMRC* [TC06116], the taxpayer successfully appealed the notice on this ground, in relation to an ongoing VAT enquiry.

In the decision, at paragraph 64 the tribunal judge stated:

*“Our view is that if HMRC wish to ask for information which goes beyond the four year enquiry window, they need to give a reason why, which we would expect to be that there is some suggestion of deliberate error on the part of the taxpayer. No such suggestion was made in this case”*

The above ruling is for VAT, so does not make a distinction for careless behaviour. However, the understanding to be drawn from that decision, is that where the information requested relates to a period beyond that for which HMRC could issue an assessment, it is not reasonably required to check the taxpayer’s tax position.

This was also considered in the case of *Hackmey v HMRC* [TC08487], where in the decision the judge commented at paragraph 43:

*“It must then follow that it cannot be reasonable for HMRC to require documents and information that relate to a period for which HMRC are out of time to raise assessments.”*

If HMRC do not have a reasonable belief that they could raise an assessment, then the requests for information from this period would not be reasonably required.

The one caveat to this would be information from earlier periods may still be reasonably required if it is relevant to a later period where HMRC is not time-barred. A common example of this could be days spent in the UK in earlier years, when considering the Statutory Residence Test.

## Time limits

# 12

When HMRC issues a formal information notice under Schedule 36, they typically allow 30 days for the taxpayer to provide the requested information. For substantial requests, HMRC may grant additional time.

HMRC’s own guidance at Compliance Handbook CH23420 states:

*“As a general rule of thumb, it might be reasonable to expect that most information or documents could be provided or produced within 30 days from the date of the notice but may need to be longer around a business’s seasonal peaks.”*

However, recently, we have seen more instances where HMRC sets deadlines of less than 30 days, often following the VAT enquiry model of 21 days.

The appeal window for a Schedule 36 information notice is 30 days from the date of the notice, and with the new approach from HMRC, this leads to the unusual scenario where a taxpayer could miss the deadline for complying with a notice, and therefore be liable to an initial penalty, for a notice which is not finalized and can still be validly appealed.



What is interesting is that the legislation does not prescribe a statutory minimum response time. It simply requires that HMRC allow a reasonable period for compliance.

Historically, the 30-day deadline was common practice, and considering the appeal window, one might also argue common sense.

On receipt of a notice, check both the compliance deadline and the appeal deadline immediately. If the response period is short, consider whether a reasonable extension should be requested.

## Summary and practical points

### 13

It is important to consider both informal and formal information requests from HMRC carefully.

HMRC are entitled to know the full facts relating to a person's tax position, and on this basis, there is a substantial amount of information that they are entitled to request. However, this does not mean that a taxpayer should automatically provide every item included on a Schedule 36 Information Notice.

Each item on the notice should be considered on its own merits, as to whether it is a reasonable request, and the extent of the notice should also be considered in line with the time provided by HMRC to comply.

Whilst the penalties for non-compliance may appear small at first glance, these can grow and can also have a knock-on impact on other aspects of an enquiry, in particular with possible behaviour discussions and future information requests.

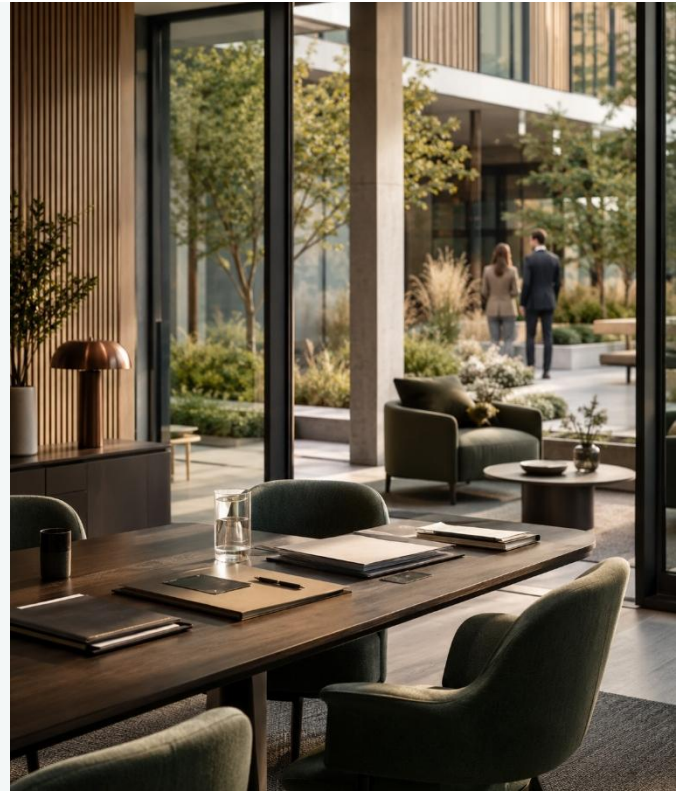
A Schedule 36 notice should not be ignored, but nor should it be treated as a request that must automatically be answered in full. The practical task is to respond cooperatively while testing whether each requirement is lawful, proportionate and reasonably required.



## Responding to HMRC Information Notices with Trident Tax

At Trident Tax, we advise taxpayers, trustees, corporate service providers and professional advisers on responding to HMRC information requests and Schedule 36 Information Notices. Our team helps assess the scope of HMRC's request, identify any restrictions or appeal rights, and manage the response in a clear and strategic way.

Whether you have received an informal request, a formal taxpayer notice, or are concerned about the information being sought, Trident Tax offers tailored advice to help protect your position, reduce the risk of penalties and avoid unnecessary escalation.



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