

Clause 1 and Schedule 1: Information Powers

Summary

1. This clause and Schedule introduce new provisions in to HMRC's civil information powers contained in Schedule 36 to the Finance Act 2008 (FA 2008). The provisions introduce a new financial institution notice (FIN). The FIN will not require approval from the tribunal or taxpayer before it can be issued to a financial institution to get third party information or documents. The clause and Schedules also make a number of technical changes to Schedule 36.

Details of the clause

2. Clause 1 introduces Schedule 1. Schedule 1 provides a new information power for collecting data from certain third parties for use by HMRC in its compliance activities. A third party is someone other than the taxpayer who holds information or documents. Schedule 1 also makes a number of other amendments to Schedule 36 FA 2008.

Details of the Schedule

Part 1: Introductory

3. Paragraph 1 introduces the amendments to Schedule 36 to FA 2008.

Part 2: Financial Institution Notices

4. Paragraph 2 inserts new paragraph 4A into Schedule 36 to FA 2008. The sub-paragraphs of the new paragraph 4A provide for the following.
5. New sub-paragraph 4A(1) provides that HMRC may give a notice to a financial institution which would require it to provide information, or produce documents, to HMRC, if two conditions, A and B, are met.
6. New sub-paragraph 4A(2) introduces condition A. Condition A is that the information or documents requested should not be onerous for the institution to provide or produce.
7. New sub-paragraph 4A(3) introduces condition B. Condition B is that the information or documents are required for one of two reasons. Either for the purpose of checking the tax position of a known taxpayer, or for the purpose of collecting a tax debt of a known taxpayer. The taxpayer does not have to be an individual (for example, it could be a company).

8. New sub-paragraph 4A(4) defines “financial institution notice” as a notice under the new paragraph 4A.
9. New sub-paragraph 4A(5) provides that a notice may only be given if issued by or approved by an authorised officer of HMRC. An authorised officer is an officer of HMRC specifically trained to undertake certain actions and to agree the use of certain information powers.
10. New sub-paragraph 4A(6) provides that the notice must name the taxpayer.
11. New sub-paragraph 4A(7) provides that an officer must give a copy of the notice and a summary of the reasons why the information and documents are required, to the taxpayer.
12. New sub-paragraph 4A(8) provides that an application may be made to the tribunal by HMRC for permission to issue a FIN without naming the taxpayer, or without sending a summary of the reasons why the information is required to the taxpayer, or without sending a copy of the notice to the taxpayer. An application must be made by, or with the agreement of, an authorised officer. An application may be made without notice. Without notice applications will be heard by the tribunal without the taxpayer or third party being present.
13. New sub-paragraph 4A(9) applies where there is an application by HMRC to dispense with naming the taxpayer in the notice. The tribunal must grant the application if satisfied that the HMRC officer has reasonable grounds to believe that naming the taxpayer might seriously prejudice the assessment or collection of tax.
14. New sub-paragraph 4A(10) applies where there is an application by HMRC to dispense with the requirement to give a copy of the notice to the taxpayer or the requirement to provide the taxpayer with a summary of reasons. The tribunal must grant the application if satisfied that complying with the relevant requirement might prejudice the assessment or collection of tax.
15. Paragraph 3 ensures that references to “information notice” in paragraph 6 of Schedule 36 to FA 2008 include references to the FIN.
16. Paragraph 4 inserts new paragraph 61ZA into Schedule 36 to FA 2008. New paragraph 61ZA which defines “financial institution” for the purposes of Schedule 36 to FA 2008 as any person treated as a financial institution for Common Reporting Standard (CRS) purposes, or any person that issues credit cards. There is an exception to this, which applies where an institution is within the CRS definition because (and only because) it is an investment entity within section VIII (A)(6)(b) of the CRS. This exception is to ensure that family trusts and charities, entities not usually considered to be financial institutions, are not within scope of the FIN. The CRS is a standard adopted by more than 100 jurisdictions, including the UK, for the exchange of financial account information.

Part 3: Other Amendments

17. Paragraph 5 inserts an additional phrase into paragraph 1(1) of Schedule 36 to FA

2008. This has the effect of allowing an officer of HMRC to give a taxpayer notice for the purpose of collecting a tax debt.
18. Paragraph 6 inserts an additional phrase into paragraph 2(1) of Schedule 36 to FA 2008. This has the effect of allowing an officer of HMRC to give a third party notice for the purpose of collecting a tax debt.
 19. Paragraph 7 inserts an additional phrase into paragraph 5(2) of Schedule 36 to FA 2008. This has the effect of allowing an authorised officer of HMRC to give a notice requiring information about persons whose identity is unknown for the purposes of collecting a tax debt.
 20. Paragraph 8 inserts additional phrases into paragraph 5A of Schedule 36, which provides the power to obtain information about persons whose identity can be ascertained. These have the effect of allowing an authorised officer of HMRC to give such a notice for the purpose of collecting a tax debt.
 21. Paragraph 9 inserts new sub-paragraph 63A after paragraph 63 of Schedule 36 to FA 2008. New sub-paragraph 63A provides the meaning of “collecting a tax debt of a person” for the purposes of this Schedule. “Collecting a tax debt” refers to action taken to recover tax due from the person. Any other amounts owed from that person in connection with any tax, such as penalties or interest, are also included. New sub-paragraph 63A also ensures that a notice can be issued where liability for a debt has been transferred to another person, for example as part of insolvency proceedings.
 22. Paragraph 10 inserts new paragraph 47(2) into Schedule 36 to FA 2008. New paragraph 47(2) ensures that there is no right of appeal against the amount of an increased daily penalty payable as a result of paragraph 49A. This is because the increased daily penalty is determined by the tribunal. The purpose of the amendments made by paragraphs 10 to 14 of this Schedule is to improve the mechanism by which increased daily penalties are approved and assessed. The amendments make it clear that it is for the tribunal to decide a new maximum increased daily penalty amount and the date from which it may be applied, and for HMRC to assess and notify any such penalties. HMRC considered that, as originally drafted, the provisions were not sufficiently clear and may have led to confusion. Similar amendments were made to Schedule 23 to Finance Act 2011 under section 177 Finance Act 2016.
 23. Paragraph 11 amends references to paragraph 47 made in paragraph 48, to reflect the amendments made to the numbering in paragraph 47.
 24. Paragraph 12 amends paragraph 49A of Schedule 36 to FA 2008.
 25. Sub-paragraph 1 introduces amendments to paragraph 49A of Schedule 36 to FA 2008.
 26. Sub-paragraphs 2 and 3 amend sub-paragraphs 49A(1) and 49A(2) of Schedule 36. The word “imposed” is substituted with “assessable”. This is to make it clear that HMRC can assess and notify penalties, and it is for the tribunal to decide the amount of the penalty and the date from which it may be applied. Under paragraph 49A(2),

HMRC can seek permission from the tribunal to assess an increased daily penalty against the recipient of a notice from an applicable date in the future.

27. Sub-paragraph 4 substitutes new sub-paragraphs 49A(3) and 49A(4) into Schedule 36. These provide that, if the tribunal grants HMRC's application for an increased daily penalty to be assessable, it must specify the date from which that penalty takes effect and must determine its maximum amount. The new maximum amount may not be more than £1,000. From the day specified, the new maximum penalty amount replaces the amount of the maximum daily default penalty stipulated in paragraph 40(2) of Schedule 36.
28. Sub-paragraph 5 amends sub-paragraph 49A(5) of Schedule 36. The words "the amount" are substituted with "the maximum amount".
29. Sub-paragraph 6 amends sub-paragraph 49A(6) of Schedule 36. Sub-paragraph 49A(6) is amended to provide that the "relevant date" for the purposes of the application of paragraph 41 to paragraph 49A(4) is the date on which Finance Act 2021 receives royal assent. Paragraph 41 gives HM Treasury the power, by regulations, to change the amount of certain penalties in Schedule 36 by regulations where there has been a change in the value of money.
30. Paragraph 13 amends paragraph 49B of Schedule 36 to FA 2008.
31. Sub-paragraph 1 introduces amendments to paragraph 49B of Schedule 36.
32. Sub-paragraph 2 amends sub-paragraph 49B(1). Sub-paragraph 49B(1) is amended to reflect that the tribunal will make a determination of the maximum amount of an increased daily penalty and the date from which it will apply, and that HMRC's obligation to notify the person subject to the penalty arises when the tribunal makes the determination.
33. Sub-paragraph 3 amends sub-paragraph 49B(2). Sub-paragraph 49B(2) is amended to provide that HMRC's notification should specify the maximum amount and the effective date determined by the tribunal.
34. Sub-paragraph 4 omits sub-paragraph 49B(3). Sub-paragraph 49B(3) is omitted as the notification sent by HMRC under 49B is not an assessment of the penalty. The intention is to notify the person of new maximum daily penalty amount and the date from which it takes effect. HMRC will assess the penalty under the assessing provision at paragraph 46. The recipient is then able to appeal against that penalty in the usual way.
35. Paragraph 14 omits paragraph 49C of Schedule 36 to FA 2008, the effect of which is as follows.
 - a. The former requirement for a penalty under paragraph 49A to be paid within 30 days of notification under paragraph 49B is removed. Under the amended provisions, notification under paragraph 49B is not the assessment of a penalty, but merely notice of the date from which the increased penalty will apply and its maximum amount. HMRC will have to assess the paragraph 49A penalty under the assessing provision at paragraph 46.

- b. The former express provision that a penalty under paragraph 49A may be enforced as if it were income tax charged in an assessment is also removed. This will now follow in relation to the increased daily penalty as a result of paragraph 49(2).
36. Paragraph 15 inserts new paragraphs 51A, 51B and 51C into Schedule 36 FA 2008.
37. New paragraph 51A sets out a non-disclosure requirement which may be imposed on the recipient of either a third party notice or a FIN.
38. New sub-paragraph 51A(1) provides that this paragraph only applies when a person is given a third party notice or a FIN, and the tribunal has disapplied the requirement to give a copy of the notice to the taxpayer to whom it relates.
39. New sub-paragraph 51A(2) provides that the third party notice or FIN may require the recipient of the notice not to disclose the notice to the relevant taxpayer. This includes non-disclosure of the notice itself as well as anything relating to it, such as correspondence.
40. New sub-paragraph 51A(3) provides that the non-disclosure requirement takes effect from the day on which the person receives the notice and is imposed for 12 months from that date. The non-disclosure requirement may be lifted before the end of the 12-month period (under sub-paragraph 4). The 12-month period may also be extended (under sub-paragraph 5).
41. New sub-paragraph 51A(4) provides that the non-disclosure requirement may be lifted by written notice from an officer of HMRC.
42. New sub-paragraph 51A(5) provides that the 12-month period may be extended by written notice from an officer of HMRC. This subsequent 12-month period begins the day after the previous 12-month period ends, and can be extended more than once.
43. New sub-paragraph 51A(6) provides that an officer of HMRC may only withdraw the notice or extend the 12-month period if they are an authorised officer, or if an authorised officer agrees the course of action.
44. New sub-paragraph 51A(7) provides that an authorised officer of HMRC may only extend the 12-month period, or agree to such an extension, if they have reasonable grounds to believe that not doing so might prejudice the assessment or collection of tax.
45. New Paragraph 51B provides for a penalty for breach of the requirements under paragraph 51A.
46. New sub-paragraph 51B(1) provides that any breach by a person subject to a non-disclosure requirement under paragraph 51A will give rise to liability for a penalty of £1,000.
47. New sub-paragraph 51B(2) provides that, if a person becomes liable for a penalty due to breach of the non-disclosure requirement and HMRC decide to assess the penalty, the person liable must be notified.

48. New sub-paragraph 51B(3) provides that, if HMRC decide to assess the penalty, the assessment must be made within 12-months of the date on which the breach was discovered by an officer of HMRC.
49. New sub-paragraph 51B(4) provides the modified application of paragraph 41 of Schedule 36B to paragraph 51B. Paragraph 41 gives HM Treasury the power, by regulations, to change the amount of certain penalties in Schedule 36 by regulations where there has been a change in the value of money. New paragraph 51B(4) provides that that the “relevant date” for the purposes of the application of paragraph 41 is the date on which Finance Act 2021 receives royal assent. It also ensures that regulations made under paragraph 41 cannot apply to a breach of a requirement under paragraph 51A occurring before the date on which such regulations come in to force.
50. New Paragraph 51C contains the rules for appealing against, and enforcement of, a penalty under paragraph 51B.
51. New sub-paragraph 51C(1) provides that an appeal may be made against a penalty under paragraph 51B.
52. New sub-paragraph 51C(2) provides that the procedure on appeal against a penalty in paragraph 48 of Schedule 36 to Finance Act 2008, applies to a penalty under paragraph 51B. The reference to notification under paragraph 46 of Schedule 36 made in paragraph 48 is to be understood as reference to notification under paragraph 51B(2)(b).
53. New sub-paragraph 51C(3) provides that the enforcement of a penalty under paragraph 49 applies to a penalty under paragraph 51B. The reference to notification under paragraph 46 made in paragraph 48 of Schedule 36 Finance Act 2008 is to be understood as reference to notification under paragraph 51B (2)(b).

Part 4: Reporting Requirements

54. Paragraph 16 imposes reporting requirements on HMRC in relation to FINs.
55. Sub-paragraph 1 provides that after the end of every financial year, HMRC must provide information to HM Treasury. The information must contain the number of FINs given that year, as well as any other information HM Treasury may ask for.
56. Sub-paragraph 2 provides that the information given under sub-paragraph 1 must be included in a report laid before the House of Commons, by HM Treasury.
57. Sub-paragraph 3 provides that the report to the House of Commons must be provided by 31 January following the end of the financial year to which the report relates. For example, a report for the year ended 31 March 2023 would be due to the House of Commons no later than 31 January 2024.
58. Sub-paragraph 4 provides the meaning of a “financial institution notice” and “financial year” for the purposes of these reporting requirements. A “financial institution notice” is a notice under paragraph 4A of Schedule 36 to FA 2008. For the first report, the “financial year” begins on the date on which this Schedule comes in

to force and ends on 31 March 2022. For every subsequent report, the “financial year” begins on 1 April and ends on the following 31 March.

Part 5: Commencement

59. Paragraph 17 provides the commencement provisions.
60. Sub-paragraph 1 provides that a FIN can be issued on or after the day on which this Act becomes law for the purposes of checking the tax position of a taxpayer, or for the purposes of collecting a tax debt, regardless of when the tax liabilities or tax debt in question arose.
61. Sub-paragraph 2 provides that any other information notice can be issued after Royal Assent for the purposes of collecting a tax debt regardless of when the tax debt arose.
62. Sub-paragraph 3 provides that the changes made by paragraph 15 of the Schedule apply to third party notices or FINs given on or after the day on which Finance Act 2021 obtains royal assent.

Background note

63. This clause and Schedule has been introduced to allow HMRC to obtain third party information from financial institutions without the need for tribunal approval and to make some technical changes. This follows recommendation from the OECD Global Forum that the UK ensures its procedure for accessing third party information is in line with international standards.
64. This clause and Schedule has been introduced following a formal consultation process that ran from 10 July 2018 to 2 October 2018.
65. If you have any questions about this change, or comments on the legislation, please contact the Exchange of Information Policy Team at eo.policy@hmrc.gov.uk.