



# Consumer Credit Act 1974

## 1974 CHAPTER 39

### PART III

#### LICENSING OF CREDIT AND HIRE BUSINESSES

##### *Miscellaneous*

#### 34 Representations to [F<sup>1</sup>OFT].

- (1) Where this section applies to an invitation by the [F<sup>2</sup>OFT] to any person to submit representations, the [F<sup>2</sup>OFT] shall invite that person, within 21 days after the notice containing the invitation is given to him or published, or such longer period as the [F<sup>2</sup>OFT] may allow,—
  - (a) to submit his representations in writing to the [F<sup>2</sup>OFT] , and
  - (b) to give notice to the [F<sup>2</sup>OFT] , if he thinks fit, that he wishes to make representations orally,and where notice is given under paragraph (b) the [F<sup>2</sup>OFT] shall arrange for the oral representations to be heard.
- (2) In reaching [F<sup>3</sup>its] determination the [F<sup>2</sup>OFT] shall take into account any representations submitted or made under this section.
- (3) The [F<sup>2</sup>OFT] shall give notice of [F<sup>3</sup>its] determination to the persons who were required to be invited to submit representations about it or, where the invitation to submit representations was required to be given by general notice, shall give general notice of the determination.

#### Textual Amendments

- F1** Words in s. 34 sidenote substituted (1.4.2003) by virtue of [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para 6\(16\)\(a\)](#); S.I. 2003/766, [art. 2](#), Sch. (with art. 3)
- F2** Words in s. 34 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 6\(16\)\(a\)](#); S.I. 2003/766, [art. 2](#), Sch. (with art. 3)

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**F3** Words in s. 34(2)(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 6(16)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

### [<sup>F4</sup>34A Winding-up of standard licensee's business

- (1) If it thinks fit, the OFT may, for the purpose of enabling the licensee's business, or any part of his business, to be transferred or wound up, include as part of a determination to which subsection (2) applies provision authorising the licensee to carry on for a specified period—
- (a) specified activities, or
  - (b) activities of specified descriptions,
- which, because of that determination, the licensee will no longer be licensed to carry on.
- (2) This subsection applies to the following determinations—
- (a) a determination to refuse to renew a standard licence in accordance with the terms of the application for its renewal;
  - (b) a determination to vary such a licence under section 31;
  - (c) a determination to suspend or revoke such a licence.
- (3) Such provision—
- (a) may specify different periods for different activities or activities of different descriptions;
  - (b) may provide for persons other than the licensee to carry on activities under the authorisation;
  - (c) may specify requirements which must be complied with by a person carrying on activities under the authorisation in relation to those activities;
- and, if a requirement specified under paragraph (c) is not complied with, the OFT may by notice to a person carrying on activities under the authorisation terminate the authorisation (in whole or in part) from a specified date.
- (4) Without prejudice to the generality of paragraph (c) of subsection (3), a requirement specified under that paragraph may have the effect of—
- (a) preventing a named person from being an employee of a person carrying on activities under the authorisation, or restricting the activities he may engage in as an employee of such a person;
  - (b) preventing a named person from doing something, or restricting his doing something, in connection with activities being carried on by a person under the authorisation;
  - (c) securing that access to premises is given to officers of the OFT for the purpose of enabling them to inspect documents or to observe the carrying on of activities.
- (5) Activities carried on under an authorisation shall be treated for the purposes of sections 39(1), 40, 148 and 149 as if carried on under a standard licence.]

#### Textual Amendments

**F4** S. 34A inserted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {32(1)}, 71(2); S.I. 2007/3300, art. 3(2), Sch. 2

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## 35 The register.

- (1) The [F5OFT] shall establish and maintain a register, in which [F6it] shall cause to be kept particulars of—
  - (a) applications not yet determined for the issue, variation or renewal of licences, or for ending the suspension of a licence;
  - (b) licences which are in [F7effect], or have at any time been suspended or revoked [F8or terminated by section 28C], with details of any variation of the terms of a licence;
  - [F9(ba) requirements imposed under section 33A or 33B which are in effect or which have been in effect, with details of any variation of such a requirement;]
  - (c) decisions given by [F10it] under this Act, and any appeal from those decisions; and
  - (d) such other matters (if any) as [F6it] thinks fit.
- [F11(1A) The [F5OFT] shall also cause to be kept in the register any copy of any notice or other document relating to a consumer credit EEA firm which is given to the [F5OFT] by the Financial Services Authority for inclusion in the register.]
- (2) The [F5OFT] shall give general notice of the various matters required to be entered in the register, and of any change in them made under subsection (1)(d).
- (3) Any person shall be entitled on payment of the specified fee—
  - (a) to inspect the register during ordinary office hours and take copies of any entry, or
  - (b) to obtain from the [F5OFT] a copy, certified by the [F5OFT] to be correct, of any entry in the register.
- (4) The [F5OFT] may, if [F6it] thinks fit, determine that the right conferred by subsection (3)
  - (a) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.
- (5) The [F5OFT] shall give general notice of the place or places where, and times when, the register or a copy of it may be inspected.

### Textual Amendments

- F5** Words in s. 35 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(17)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F6** Words in s. 35(1)(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(17)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F7** Word in s. 35(1)(b) substituted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {34(7)}, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F8** Words in s. 35(1)(b) inserted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {37(2)}, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F9** S. 35(1)(ba) inserted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {43(1)}, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F10** Word in s.35(1)(c) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(17)(c)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F11** S. 35(1A) inserted (1.12.2001) by S.I. 2001/3649, **art. 169**

### Modifications etc. (not altering text)

- C1** S. 35 extended (1.1.1993) by S.I. 1992/3218, **reg. 60**

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S. 35 modified (1.1.1996) by S.I. 1995/3275, reg. 37

### 36 Duty to notify changes.

- (1) Within 21 days working days after a change takes place in any particulars entered in the register in respect of a standard licence or the licensee under section 35(1)(d) (not being a change resulting from action taken by the [F12OFT]), the licensee shall give the [F12OFT] notice of the change; and the [F12OFT] shall cause any necessary amendment to be made in the register.
- (2) Within 21 working days after—
  - (a) any change takes place in the officers of—
    - (i) a body corporate, or an unincorporated body of persons, which is the licensee under a standard licence, or
    - (ii) a body corporate which is a controller of a body corporate which is such a licensee, or
  - (b) a body corporate which is such a licensee becomes aware that a person has become or ceased to be a controller of the body corporate, or
  - (c) any change takes place in the members of a partnership which is such a licensee (including a change on the amalgamation of the partnership with another firm, or a change whereby the number of partners is reduced to one),
 the licensee shall give the [F12OFT] notice of the change.
- (3) Within 14 working days after any change takes place in the officers of a body corporate which is a controller of another body corporate which is a licensee under a standard licence, the controller shall give the licensee notice of the change.
- (4) Within 14 working days after a person becomes or ceases to be a controller of a body corporate which is a licensee under a standard licence, that person shall give the licensee notice of the fact.
- (5) Where a change in a partnership has the result that the business ceases to be carried on under the name, or any of the names, specified in a standard licence the licence shall cease to have effect.
- (6) <sup>F13</sup> .....

#### Textual Amendments

- F12** Words in s. 36 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 6(18) (a); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F13** S. 36(6) repealed (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. 70, 71(2), Sch. 4; S.I. 2007/3300, art. 3(2), Sch. 2

#### [F14]36A Further duties to notify changes etc.

- (1) Subsections (2) to (4) apply where a general notice under section 6(2) comes into effect.
- (2) A person who is the licensee under a standard licence or who is the original applicant for a group licence shall, in relation to each relevant application which he has made

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- and which was determined before the general notice came into effect, provide the OFT with any information or document—
- (a) which he would have been required to provide with the application had the application been made after the general notice came into effect; and
  - (b) which the general notice requires to be provided for the purposes of this subsection.
- (3) Any such information or document shall be provided within such period as may be specified in the general notice.
- (4) Subsection (2) does not require a person to provide any information or document—
- (a) which he provided in relation to the application by virtue of section 6;
  - (b) which he has previously provided in relation to the application by virtue of this section; or
  - (c) which he would have been required to provide in relation to the application by virtue of subsection (5) but for subsection (6).
- (5) A person who is the licensee under a standard licence or who is the original applicant for a group licence shall, in relation to each relevant application which he has made, notify the OFT giving details if, after the application is determined, any information or document which he—
- (a) provided in relation to the application by virtue of section 6, or
  - (b) has so provided by virtue of this section,
- is, to any extent, superseded or otherwise affected by a change in circumstances.
- (6) Subsection (5) does not require a person to notify the OFT about a matter unless it falls within a description of matters specified by the OFT in a general notice.
- (7) A description may be specified for the purposes of subsection (6) only if the OFT is satisfied that the matters which would fall within that description are matters which would be relevant to the question of—
- (a) whether, having regard to section 25(2), a person is a fit person to carry on a business under a standard licence; or
  - (b) whether the public interest is better served by a group licence remaining in effect than by obliging the licensees under it to apply separately for standard licences.
- (8) A person who is the licensee under a standard licence or who is the original applicant for a group licence shall, in relation to each relevant application which he has made, notify the OFT about every error or omission—
- (a) in or from any information or document which he provided by virtue of section 6, or which he has provided by virtue of this section, in relation to the application; and
  - (b) of which he becomes aware after the determination of the application.
- (9) A notification for the purposes of subsection (5) or (8) shall be given within the period of 28 days beginning with the day on which (as the case may be)—
- (a) the information or document is superseded;
  - (b) the change in circumstances occurs; or
  - (c) the licensee or the original applicant becomes aware of the error or omission.
- (10) This section does not require a person to notify the OFT about—
- (a) anything of which he is required to notify it under section 36; or

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- (b) an error in or omission from any information or document which is a clerical error or omission not affecting the substance of the information or document.
- (11) In this section ‘relevant application’ means, in relation to a person who is the licensee under a standard licence or who is the original applicant for a group licence—
- (a) the original application for the licence; or
  - (b) an application for its renewal or for its variation.]

#### Textual Amendments

**F14** S. 36A inserted (1.12.2007 for specified purposes and otherwise 6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {45}, 71(2) (with Sch. 3 para. 24); [S.I. 2007/3300](#), [art. 3\(1\)](#), [Sch. 1](#); [S.I. 2007/3300](#), [art. 3\(2\)](#), [Sch. 2](#)

#### [<sup>F15</sup>36B Power of OFT to require information generally

- (1) The OFT may by notice to a person require him—
  - (a) to provide such information as may be specified or described in the notice; or
  - (b) to produce such documents as may be so specified or described.
- (2) The notice shall set out the reasons why the OFT requires the information or documents to be provided or produced.
- (3) The information or documents shall be provided or produced—
  - (a) before the end of such reasonable period as may be specified in the notice; and
  - (b) at such place as may be so specified.
- (4) A requirement may be imposed under subsection (1) on a person who is—
  - (a) the licensee under a standard licence, or
  - (b) the original applicant for a group licence,
 only if the provision or production of the information or documents in question is reasonably required for purposes connected with the OFT’s functions under this Act.
- (5) A requirement may be imposed under subsection (1) on any other person only if—
  - (a) an act or omission mentioned in subsection (6) has occurred or the OFT has reason to suspect that such an act or omission has occurred; and
  - (b) the provision or production of the information or documents in question is reasonably required for purposes connected with—
    - (i) the taking by the OFT of steps under this Part as a consequence; or
    - (ii) its consideration of whether to take such steps as a consequence.
- (6) Those acts or omissions are acts or omissions which—
  - (a) cast doubt on whether, having regard to section 25(2), a person is a fit person to carry on a business under a standard licence;
  - (b) cast doubt on whether the public interest is better served by a group licence remaining in effect, or being issued, than by obliging the persons who are licensees under it, or who would be licensees under it, to apply separately for standard licences;
  - (c) give rise, or are likely to give rise, to dissatisfaction for the purposes of section 33A(1) or 33B(1); or
  - (d) constitute or give rise to a failure of the kind mentioned in section 39A(1).]

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### Textual Amendments

**F15** S. 36B inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {46}, 71(2); [S.I. 2007/3300](#), [art. 3\(2\)](#), Sch. 2

## [<sup>F16</sup>36C Power of OFT to require access to premises

- (1) The OFT may by notice to a licensee under a licence require him to secure that access to the premises specified or described in the notice is given to an officer of an enforcement authority in order for the officer—
  - (a) to observe the carrying on of a business under the licence by the licensee; or
  - (b) to inspect such documents of the licensee relating to such a business as are—
    - (i) specified or described in the notice; and
    - (ii) situated on the premises.
- (2) The notice shall set out the reasons why the access is required.
- (3) The premises which may be specified or described in the notice—
  - (a) include premises which are not premises of the licensee if they are premises from which he carries on activities in connection with the business in question; but
  - (b) do not include premises which are used only as a dwelling.
- (4) The licensee shall secure that the required access is given at such times as the OFT reasonably requires.
- (5) The OFT shall give reasonable notice of those times.
- (6) Where an officer is given access to any premises by virtue of this section, the licensee shall also secure that persons on the premises give the officer such assistance or information as he may reasonably require in connection with his observation or inspection of documents (as the case may be).
- (7) The assistance that may be required under subsection (6) includes (amongst other things) the giving to the officer of an explanation of a document which he is inspecting.
- (8) A requirement may be imposed under subsection (1) on a person who is—
  - (a) the licensee under a standard licence, or
  - (b) the original applicant for a group licence,only if the observation or inspection in question is reasonably required for purposes connected with the OFT's functions under this Act.
- (9) A requirement may be imposed under subsection (1) on any other person only if—
  - (a) an act or omission mentioned in section 36B(6) has occurred or the OFT has reason to suspect that such an act or omission has occurred; and
  - (b) the observation or inspection in question is reasonably required for purposes connected with—
    - (i) the taking by the OFT of steps under this Part as a consequence; or
    - (ii) its consideration of whether to take such steps as a consequence.
- (10) In this section—

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- (a) references to a licensee under a licence include, in relation to a group licence issued on application, references to the original applicant; and
- (b) references to a business being carried on under a licence by a licensee include, in relation to the original applicant for a group licence, activities being carried on by him for the purpose of regulating or otherwise supervising (whether by virtue of an enactment, an agreement or otherwise) licensees under that licence in connection with their carrying on of businesses under that licence.]

#### Textual Amendments

**F16** S. 36C inserted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {47}, 71(2); S.I. 2007/3300, art. 3(2), Sch. 2

#### [<sup>F17</sup>36D Entry to premises under warrant

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given on behalf of the OFT that there are reasonable grounds for believing that the following conditions are satisfied.
- (2) Those conditions are—
  - (a) that there is on the premises specified in the warrant information or documents in relation to which a requirement could be imposed under section 36B; and
  - (b) that if such a requirement were to be imposed in relation to the information or documents—
    - (i) it would not be complied with; or
    - (ii) the information or documents would be tampered with.
- (3) A warrant under this section shall authorise an officer of an enforcement authority—
  - (a) to enter the premises specified in the warrant;
  - (b) to search the premises and to seize and detain any information or documents appearing to be information or documents specified in the warrant or information or documents of a description so specified;
  - (c) to take any other steps which may appear to be reasonably necessary for preserving such information or documents or preventing interference with them; and
  - (d) to use such force as may be reasonably necessary.
- (4) An officer entering premises by virtue of this section may take such persons and equipment with him as he thinks necessary.
- (5) In the application of this section to Scotland—
  - (a) the reference to a justice of the peace includes a reference to a sheriff;
  - (b) for ‘information on oath’ there is substituted ‘evidence on oath’.
- (6) In the application of this section to Northern Ireland the reference to a justice of the peace shall be construed as a reference to a lay magistrate.]

#### Textual Amendments

**F17** S. 36D inserted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {48}, 71(2); S.I. 2007/3300, art. 3(2), Sch. 2



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### [<sup>F18</sup>36E Failure to comply with information requirement

- (1) If on an application made by the OFT it appears to the court that a person (the ‘information defaulter’) has failed to do something that he was required to do by virtue of section 36B or 36C, the court may make an order under this section.
- (2) An order under this section may require the information defaulter—
  - (a) to do the thing that it appears he failed to do within such period as may be specified in the order;
  - (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.
- (3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons which is not a partnership, the order may require any officer who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.
- (4) In this section—

‘court’ means—

  - (a) in England and Wales and Northern Ireland, the High Court or the county court;
  - (b) in Scotland, the Court of Session or the sheriff;

‘officer’ means—

  - (a) in relation to a body corporate, a person holding a position of director, manager or secretary of the body or any similar position;
  - (b) in relation to a partnership or to an unincorporated body of persons, a member of the partnership or body.
- (5) In subsection (4) ‘director’ means, in relation to a body corporate whose affairs are managed by its members, a member of the body.]

#### Textual Amendments

**F18** S. 36E inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {49}, 71(2); [S.I. 2007/3300](#), [art. 3\(2\)](#), [Sch. 2](#)

### [<sup>F19</sup>36F Officers of enforcement authorities other than OFT

- (1) A relevant officer may only exercise powers by virtue of section 36C or 36D in pursuance of arrangements made with the OFT by or on behalf of the enforcement authority of which he is an officer.
- (2) Anything done or omitted to be done by, or in relation to, a relevant officer in the exercise or purported exercise of a power by virtue of section 36C or 36D shall be treated for all purposes as having been done or omitted to be done by, or in relation to, an officer of the OFT.
- (3) Subsection (2) does not apply for the purposes of any criminal proceedings brought against the officer, the enforcement authority of which he is an officer or the OFT in respect of anything done or omitted to be done by the officer.
- (4) A relevant officer shall not disclose to a person other than the OFT information obtained by his exercise of a power by virtue of section 36C or 36D unless—

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- (a) he has the approval of the OFT to do so; or
- (b) he is under a duty to make the disclosure.

(5) In this section ‘relevant officer’ means an officer of an enforcement authority other than the OFT.]

#### Textual Amendments

**F19** S. 36F inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {50}, 71(2); S.I. 2007/3300, [art. 3\(2\)](#), Sch. 2

### 37 Death, bankruptcy etc. of licensee.

- (1) A licence held by one individual terminates if he—
- (a) dies, or
  - (b) is adjudged bankrupt, or
  - <sup>F20</sup>(c) becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to carry on the activities covered by the licence.]

<sup>F21</sup>(1A) A licence terminates if the licensee gives the OFT a notice under subsection (1B).

- (1B) A notice under this subsection shall—
- (a) be in such form as the OFT may by general notice specify;
  - (b) contain such information as may be so specified;
  - (c) be accompanied by the licence or give reasons as to why it is not accompanied by the licence; and
  - (d) be signed by or on behalf of the licensee.]

(2) In relation to a licence held by one individual, or a partnership or other unincorporated body of persons, or a body corporate, regulations may specify other events relating to the licensee on the occurrence of which the licence is to terminate.

- (3) Regulations may—
- (a) provide for the termination of a licence by subsection (1) [<sup>F22</sup>or (1A)] , or under subsection (2), to be deferred for a period not exceeding 12 months, and
  - (b) authorise the business of the licensee to be carried on under the licence by some other person during the period of deferment, subject to such conditions as may be prescribed.

(4) This section does not apply to group licences.

#### Textual Amendments

**F20** S. 37(1)(c) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(1), 68, [Sch. 6 para. 21](#); S.I. 2007/1897, [art. 2\(1\)](#)

**F21** S. 37(1A)(1B) inserted (16.6.2006 for certain purposes and otherwise 6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {34(8)}, 71(2); S.I. 2006/1508, [art. 3\(1\)](#), Sch. 1; S.I. 2007/3300, [art. 3\(2\)](#), Sch. 2

**F22** Words in s. 37(3)(a) inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {34(9)}, 71(2); S.I. 2007/3300, [art. 3\(2\)](#), Sch. 2

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**Modifications etc. (not altering text)**

**C2** S. 37(1) amended by S.I. 1976/1002, **reg. 3** (as substituted by S.I. 1981/614, **reg. 2(b)**)

**38 Application of s. 37 to Scotland and Northern Ireland.**

(1) In the application of section 37 to Scotland the following shall be substituted for paragraphs (b) and (c) of subsection (1)—

- “(b) has his estate sequestrated, or
- (c) becomes incapable of managing his own affairs.”

(2) In the application of section 37 to Northern Ireland the following shall be substituted for subsection (1)—

- “(1) A licence held by one individual terminates if—
  - (a) he dies, or
  - (b) he is adjudged bankrupt or his estate and effects vest in the official assignee under section 349 of the Irish Bankrupt and Insolvent Act 1857, or
  - (c) a declaration is made under section 15 of the Lunacy Regulation (Ireland) Act 1871 that he is of unsound mind and incapable of managing his person or property, or an order is made under section 68 of that Act in consequence of its being found that he is of unsound mind and incapable of managing his affairs.”.

**39 Offences against Part III.**

(1) A person who engages in any activities for which a licence is required when he is not a licensee under a licence covering those activities commits an offence.

(2) A licensee under a standard licence who carries on business under a name not specified in the licence commits an offence.

(3) A person who fails to give the [F23OFT] or a licensee notice under section 36 within the period required commits an offence.

**Textual Amendments**

**F23** Words in s. 39 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(19)**; S.I. 2003/766, **art. 2, Sch.** (with art. 3)

**Modifications etc. (not altering text)**

- C3** S. 39(1) restricted (1.1.1993) by S.I. 1992/3218, **reg. 5(1)(c)**  
S. 39(1) excluded (1.1.1996) by S.I. 1995/3275, **reg. 5(1)(b)**  
S. 39(1) excluded (1.12.2001) by 2000 c. 8, ss. 31(1)(b), 37, **Sch. 3 Pt. II para. 15(3)**; S.I. 2001/3538, **art. 2(1)**
- C4** S. 39(1) restricted (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2) (c), **26(2)** (with reg. 3)
- C5** S. 39(1) excluded (9.2.2011 for specified purposes and otherwise 30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), **reg. 31(2)** (with reg. 3)

*Status: Point in time view as at 06/04/2008.*

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### [<sup>F24</sup>39A Power of OFT to impose civil penalties

- (1) Where the OFT is satisfied that a person (the ‘defaulter’) has failed or is failing to comply with a requirement imposed on him by virtue of section 33A, 33B or 36A, it may by notice to him (a ‘penalty notice’) impose on him a penalty of such amount as it thinks fit.
- (2) The penalty notice shall—
  - (a) specify the amount of the penalty that is being imposed;
  - (b) set out the OFT’s reasons for imposing a penalty and for specifying that amount;
  - (c) specify how the payment of the penalty may be made to the OFT; and
  - (d) specify the period within which the penalty is required to be paid.
- (3) The amount of the penalty shall not exceed £50,000.
- (4) The period specified in the penalty notice for the purposes of subsection (2)(d) shall not end earlier than the end of the period during which an appeal may be brought against the imposition of the penalty under section 41.
- (5) If the defaulter does not pay the penalty to the OFT within the period so specified—
  - (a) the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838; and
  - (b) the penalty and any interest payable on it shall be recoverable by the OFT.]

#### Textual Amendments

**F24** S. 39A inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {52}, 71(2); [S.I. 2007/3300](#), [art. 3\(2\)](#), [Sch. 2](#)

### [<sup>F25</sup>39B Further provision relating to civil penalties

- (1) Before determining to impose a penalty on a person under section 39A the OFT shall give a notice to that person—
  - (a) informing him that it is minded to impose a penalty on him;
  - (b) stating the proposed amount of the penalty;
  - (c) setting out its reasons for being minded to impose a penalty on him and for proposing that amount;
  - (d) setting out the proposed period for the payment of the penalty; and
  - (e) inviting him to submit representations to it about the matters mentioned in the preceding paragraphs in accordance with section 34.
- (2) In determining whether and how to exercise its powers under section 39A in relation to a person’s failure, the OFT shall have regard to (amongst other things)—
  - (a) any penalty or fine that has been imposed on that person by another body in relation to the conduct giving rise to the failure;
  - (b) other steps that the OFT has taken or might take under this Part in relation to that conduct.
- (3) General notice shall be given of the imposition of a penalty under section 39A on a person who is a responsible person in relation to a group licence.

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- (4) That notice shall include the matters set out in the notice imposing the penalty in accordance with section 39A(2)(a) and (b).]

#### Textual Amendments

**F25** S. 39B inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {53(1)}, 71(2)

### [<sup>F26</sup>39C Statement of policy in relation to civil penalties

- (1) The OFT shall prepare and publish a statement of policy in relation to how it exercises, or how it proposes to exercise, its powers under section 39A.
- (2) If the OFT revises the statement of policy at any time after it has been published, the OFT shall publish it as revised.
- (3) No statement of policy shall be published without the approval of the Secretary of State.
- (4) The statement of policy shall be published in such manner as the OFT thinks fit for the purpose of bringing it to the attention of those likely to be affected by it.
- (5) In preparing or revising the statement of policy the OFT shall consult such persons as it thinks fit.
- (6) In determining whether and how to exercise its powers under section 39A in relation to a person's failure, the OFT shall have regard to the statement of policy as most recently published at the time the failure occurred.
- (7) The OFT shall not impose a penalty on a person under section 39A in relation to a failure occurring before it has published a statement of policy.]

#### Textual Amendments

**F26** S. 39C inserted (1.12.2007) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {54}, 71(2) (with Sch. 3 para. 25); S.I. 2007/3300, [art. 3\(1\)](#), Sch. 1

## 40 Enforcement of agreements made by unlicensed trader.

- [<sup>F27</sup>(1) A regulated agreement is not enforceable against the debtor or hirer by a person acting in the course of a consumer credit business or a consumer hire business (as the case may be) if that person is not licensed to carry on a consumer credit business or a consumer hire business (as the case may be) of a description which covers the enforcement of the agreement.
- (1A) Unless the OFT has made an order under subsection (2) which applies to the agreement, a regulated agreement is not enforceable against the debtor or hirer if—
- (a) it was made by the creditor or owner in the course of a consumer credit business or a consumer hire business (as the case may be); and
  - (b) at the time the agreement was made he was not licensed to carry on a consumer credit business or a consumer hire business (as the case may be) of a description which covered the making of the agreement.

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- (2) Where—
- (a) during any period a person (the ‘trader’ has made regulated agreements in the course of a consumer credit business or a consumer hire business (as the case may be), and
  - (b) during that period he was not licensed to carry on a consumer credit business or a consumer hire business (as the case may be) of a description which covered the making of those agreements,
- he or his successor in title may apply to the OFT for an order that the agreements are to be treated for the purposes of subsection (1A) as if he had been licensed as required.]
- (3) Unless the [F<sup>28</sup>OFT] determines to make an order under subsection (2) in accordance with the application, [F<sup>29</sup>it] shall, before determining the application, by notice—
- (a) inform the applicant, giving [F<sup>30</sup>its] reasons, that, as the case may be, [F<sup>29</sup>it] is minded to refuse the application, or to grant it in terms different from those applied for, describing them, and
  - (b) invite the applicant to submit to the [F<sup>28</sup>OFT] representations in support of his application in accordance with section 34.
- (4) In determining whether or not to make an order under subsection (2) in respect of any period the [F<sup>28</sup>OFT] shall consider, in addition to any other relevant factors—
- (a) how far, if at all, debtors or hirers under [F<sup>31</sup>the regulated agreements in question] were prejudiced by the trader’s conduct,
  - (b) whether or not the [F<sup>28</sup>OFT] would have been likely to grant a licence covering [F<sup>32</sup>the making of those agreements during] that period on an application by the trader, and
  - (c) the degree of culpability for the failure to [F<sup>33</sup>be licensed as required] .
- (5) If the [F<sup>28</sup>OFT] thinks fit, [F<sup>34</sup>it] may in an order under subsection (2)—
- (a) limit the order to specified agreements, or agreements of a specified description or made at a specified time;
  - (b) make the order conditional on the doing of specified acts by the applicant.
- [F<sup>35</sup>(6) This section [F<sup>36</sup>(apart from subsection (1))] does not apply to a regulated agreement [F<sup>37</sup> . . . made by a consumer credit EEA firm unless at the time it was made that firm was precluded from entering into it as a result of—
- (a) a consumer credit prohibition imposed under section 203 of the Financial Services and Markets Act 2000; or
  - (b) a restriction imposed on the firm under section 204 of that Act.]
- [F<sup>38</sup>(7) Subsection (1) does not apply to the enforcement of a regulated agreement by a consumer credit EEA firm unless that firm is precluded from enforcing it as a result of a prohibition or restriction mentioned in subsection (6)(a) or (b).
- (8) This section (apart from subsection (1)) does not apply to a regulated agreement made by a person if by virtue of section 21(2) or (3) he was not required to be licensed to make the agreement.
- (9) Subsection (1) does not apply to the enforcement of a regulated agreement by a person if by virtue of section 21(2) or (3) he is not required to be licensed to enforce the agreement.]

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### Textual Amendments

- F27** S. 40(1)(1A)(2) substituted (6.4.2008) for s. 40(1)(2) by Consumer Credit Act 2006 (c. 14), ss. {26(1)}, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F28** Words in s. 40 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(20)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F29** Words in s. 40(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(20)(b)(i)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F30** Word in s. 40(3)(a) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(20)(b)(ii)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F31** Words in s. 40(4)(a) substituted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {26(2)(a)}, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F32** Words in s. 40(4)(b) inserted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {26(2)(b)}, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F33** Words in s. 40(4)(c) substituted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {26(2)(c)}, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F34** Word in s. 40(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(20)(c)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F35** S. 40(6) inserted (1.12.2001) by S.I. 2001/3649, **art. 170**
- F36** Words in s. 40(6) inserted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {26(3)}, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F37** Words in s. 40(6) repealed (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. 70, 71(2), **Sch. 4**; S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F38** S. 40(7)-(9) inserted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {26(4)}, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2

### Modifications etc. (not altering text)

- C6** S. 40 restricted (1.1.1993) by S.I. 1992/3218, **reg. 61(1)**  
S. 40 modified (1.1.1996) by S.I. 1995/3275, **reg. 38(1)**

**Status:**

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