

SCHEDULES

SCHEDULE 14

Section 144

CONSUMER REDRESS ORDERS

PART 1

GAS CONSUMERS

- 1 (1) The Gas Act 1986 is amended as set out in sub-paragraphs (2) to (7).
(2) After section 30F insert—

“30G Consumer redress orders

- (1) This section applies where the Authority is satisfied that—
- (a) a regulated person has contravened, or is contravening, any relevant condition or requirement, and
 - (b) as a result of the contravention, one or more consumers have suffered loss or damage or been caused inconvenience.
- (2) The Authority may make an order (a “consumer redress order”) requiring the regulated person to do such things as appear to the Authority necessary for the purposes of—
- (a) remedying the consequences of the contravention, or
 - (b) preventing a contravention of the same or a similar kind from being repeated.
- (3) A consumer redress order must specify the following—
- (a) the regulated person to whom the order applies;
 - (b) the contravention in respect of which the order is made;
 - (c) the affected consumers, or a description of such consumers;
 - (d) the requirements imposed by the order;
 - (e) the date by which the regulated person must comply with such requirements.
- (4) As soon as practicable after making a consumer redress order, the Authority must—
- (a) serve a copy of the order on the regulated person to whom the order applies, and
 - (b) either—
 - (i) serve a copy of the order on each affected consumer, or
 - (ii) publish the order in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of affected consumers.

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- (5) The date specified in a consumer redress order under subsection (3)(e) may not be earlier than the end of the period of 7 days from the date of the service of a copy of the order on the regulated person.
- (6) Different dates may be specified under subsection (3)(e) in relation to different requirements imposed by the order.
- (7) This section is subject to sections 30H to 30O.
- (8) In this section and in sections 30H to 30O—
 - “affected consumers”, in relation to a consumer redress order (or proposed order), are those consumers that the Authority is satisfied have suffered loss or damage, or been caused inconvenience, as a result of the contravention in respect of which the order is (or would be) made;
 - “consumers” means consumers in relation to gas conveyed through pipes;
 - “consumer redress order” means an order under subsection (2).

30H Remedial action under a consumer redress order

- (1) The things mentioned in section 30G(2) that a regulated person may be required to do under a consumer redress order (“the required remedial action”) include, in particular—
 - (a) paying an amount to each affected consumer by way of compensation for the loss or damage suffered, or for the inconvenience caused, as a result of the contravention;
 - (b) preparing and distributing a written statement setting out the contravention and its consequences;
 - (c) terminating or varying any contracts entered into between the regulated person and affected consumers.
- (2) Where the required remedial action includes the payment of compensation, the order must specify—
 - (a) the amount of compensation to be paid, and
 - (b) the affected consumers, or a description of such consumers, to whom it is to be paid.
- (3) Where the required remedial action includes the preparation and distribution of a statement, the order may specify the information to be contained in the statement and the form and manner in which it is to be distributed.
- (4) The manner so specified may in particular include—
 - (a) sending a copy of the statement to each affected consumer;
 - (b) publishing the statement in such manner as the Authority considers appropriate for the purpose of bringing the statement to the attention of those consumers.
- (5) Where the required remedial action includes the termination or variation of a contract with an affected consumer—
 - (a) the order may specify the terms on which the contract is to be terminated or the way in which it is to be varied,

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- (b) the requirement has effect only if, and to the extent that, the affected consumer consents to the termination of the contract on those terms or to its variation in that way, and
- (c) the order may specify the steps to be taken by the regulated person for the purpose of enabling the affected consumer to give such consent.

30I Other procedural requirements in relation to consumer redress orders

- (1) Before making a consumer redress order the Authority must give notice stating that it proposes to make the order.
- (2) A notice under subsection (1) must specify—
 - (a) the regulated person to whom the order will apply,
 - (b) the contravention in respect of which the order is to be made,
 - (c) the affected consumers, or a description of such consumers,
 - (d) the requirements to be imposed by the order and the period within which such requirements are to be complied with, and
 - (e) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed order may be made,and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (3) Before varying any proposal stated in a notice under subsection (1) the Authority must give notice specifying—
 - (a) the proposed variation and the reasons for it, and
 - (b) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed variation may be made,and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (4) Before revoking a consumer redress order the Authority must give notice—
 - (a) stating that it proposes to revoke the order and the reasons for doing so, and
 - (b) specifying the time (not being less than 21 days from the relevant date) within which representations or objections to the proposed revocation may be made,and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (5) A notice required to be given under this section is to be given—
 - (a) by serving a copy of the notice on the regulated person, and
 - (b) either—
 - (i) by serving a copy of the notice on each affected consumer, or
 - (ii) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of affected consumers.

Status: This is the original version (as it was originally enacted).

- (6) The “relevant date”, in relation to a notice under this section, is—
- (a) in a case where the notice is published in accordance with subsection (5)(b)(ii), the date on which it is published;
 - (b) in any other case, the latest date on which a copy of the notice is served in accordance with subsection (5)(a) and (b)(i).

30J Statement of policy with respect to consumer redress orders

- (1) The Authority must prepare and publish a statement of policy with respect to—
- (a) the making of consumer redress orders, and
 - (b) the determination of the requirements to be imposed by such orders (including, in particular, the considerations the Authority will have regard to in determining such requirements).
- (2) The Authority must have regard to its current statement of policy—
- (a) in deciding whether to make a consumer redress order in respect of a contravention, and
 - (b) in determining the requirements to be imposed by any such order.
- (3) The Authority may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) Publication under this section is to be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority must consult such persons as it considers appropriate when preparing or revising its statement of policy.

30K Time limits for making consumer redress orders

- (1) Where no final or provisional order has been made in relation to a contravention, the Authority may not give a consumer redress order in respect of the contravention later than the end of the period of 5 years from the time of the contravention.
- (2) Subsection (1) does not apply if before the end of that period—
- (a) the notice under section 30I(1) relating to the order is served on the regulated person, or
 - (b) a notice relating to the contravention is served on the regulated person under section 38(1).
- (3) Where a final or provisional order has been made in relation to a contravention, the Authority may give a consumer redress order in respect of the contravention only if the notice relating to the consumer redress order under section 30I(1) is served on the regulated person—
- (a) within 3 months from the confirmation of the provisional order or the making of the final order, or
 - (b) where the provisional order is not confirmed, within 6 months from the making of the provisional order.

30L Enforcement of consumer redress orders

- (1) Compliance with a consumer redress order is enforceable by civil proceedings by the Authority—
 - (a) for an injunction or interdict,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
 - (c) for any other appropriate remedy or relief.
- (2) Proceedings under subsection (1) are to be brought—
 - (a) in England and Wales, in the High Court, or
 - (b) in Scotland, in the Court of Session.
- (3) The obligation of a regulated person to comply with a consumer redress order is a duty owed to any person who may be affected by a contravention of the order.
- (4) Without limiting the Authority's right to bring civil proceedings under subsection (1), a duty owed to any person ("P") by virtue of subsection (3) may be enforced by civil proceedings by P for any appropriate remedy or relief.
- (5) For the purposes of subsection (4), the duty owed to P may in particular be enforced by P as if it were contained in a contract between P and the regulated person who owes the duty.

30M Appeals against consumer redress orders

- (1) A regulated person in respect of whom a consumer redress order is made may make an application to the court under this section if the person is aggrieved by—
 - (a) the making of the order, or
 - (b) any requirement imposed by the order.
- (2) An application under subsection (1) must be made within 42 days from the date of service on the regulated person of a copy of the order under section 30G(4)(a).
- (3) On an application under subsection (1) the court may—
 - (a) quash the order or any provision of the order, or
 - (b) vary any such provision in such manner as the court considers appropriate.
- (4) The court may exercise the powers under subsection (3) only if it considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the following grounds—
 - (a) that the making of the order was not within the power of the Authority under section 30G;
 - (b) that any of the requirements under section 30G(4) and 30I have not been complied with in relation to the making of the order and the interests of the regulated person have been substantially prejudiced by the non-compliance;

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- (c) that it was unreasonable of the Authority to require something to be done under the order (whether at all or in accordance with the provisions of the order).
- (5) If an application is made under this section in relation to a consumer redress order, a requirement imposed by the order does not need to be carried out in accordance with the order until the application has been determined.
- (6) Where the court substitutes a lesser amount of compensation for an amount required by the Authority in a consumer redress order, it may require the payment of interest on the substituted amount at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which any compensation under a consumer redress order is to be paid a date before the determination of the application under this section, it may require the payment of interest on the amount from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a consumer redress order is not to be questioned by any legal proceedings whatever.
- (9) In this section “the court” means—
 - (a) in relation to England and Wales, the High Court;
 - (b) in relation to Scotland, the Court of Session.

30N Consumer redress orders: miscellaneous

- (1) If—
 - (a) compensation is required to be paid under a consumer redress order, and
 - (b) it is not paid by the date by which it is required to be paid in accordance with the order,the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) The Authority may not make a consumer redress order where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
- (3) The Authority’s power to make a consumer redress order as a result of a contravention of a relevant condition or requirement is not to be taken as limiting the Authority’s power to impose a penalty under section 30A in relation to the same contravention (whether instead of, or in addition to, making a consumer redress order).
- (4) The power of the Authority to make a consumer redress order is not exercisable in respect of any contravention before the coming into force of Schedule 14 to the Energy Act 2013.

30O Maximum amount of penalty or compensation

- (1) The maximum amount of penalty that may be imposed on a regulated person in respect of a contravention may not exceed 10 per cent of the person’s turnover.

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- (2) The maximum amount of compensation that a regulated person may be required to pay in respect of a contravention may not exceed 10 per cent of the person's turnover.
 - (3) Subsections (1) and (2) are subject to subsection (4) if, in respect of a contravention, both a penalty is imposed and compensation is required to be paid.
 - (4) The maximum amount in total of the penalty and compensation combined in respect of the contravention may not exceed 10 per cent of the regulated person's turnover.
 - (5) The Secretary of State may by order provide for how a person's turnover is to be determined for the purposes of this section.
 - (6) An order under subsection (5) may make different provision for penalties and compensation.
 - (7) An order under subsection (5) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
 - (8) In this section—
 - “compensation” means compensation that a regulated person is required to pay by a consumer redress order;
 - “penalty” means a penalty imposed on a regulated person under section 30A.”
- (3) In section 28 (orders for securing compliance), in subsection (8) for “30F” substitute “30O”.
 - (4) In section 30A (penalties), for subsections (8) and (9) substitute—
 - “(8A) This section is subject to section 30O (maximum amount of penalty or compensation that may be imposed).”
 - (5) In the title of section 30E, after “Appeals” insert “against penalties”.
 - (6) In section 38 (power to require information), in subsection (1) for “30F” substitute “30O”.
 - (7) In section 64 (provisions as to orders), in subsection (2) for “30A” substitute “30O”.
 - (8) An order under section 30A(8) of the Gas Act 1986 that is in force immediately before the coming into force of this paragraph—
 - (a) is, on the coming into force of this paragraph, to have effect as if made in accordance with section 30O(5) of that Act (as inserted by this paragraph), and
 - (b) is to be taken as applying in relation to a requirement to pay compensation imposed by a consumer redress order made under section 30G of that Act (as inserted by this paragraph) as it applies in relation to a penalty imposed under section 30A of that Act.

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PART 2

ELECTRICITY CONSUMERS

- 2 (1) EA 1989 is amended as set out in sub-paragraphs (2) to (6).
 (2) After section 27F insert—

“27G Consumer redress orders

- (1) This section applies where the Authority is satisfied that—
- (a) a regulated person has contravened, or is contravening, any relevant condition or requirement, and
 - (b) as a result of the contravention, one or more consumers have suffered loss or damage or been caused inconvenience.
- (2) The Authority may make an order (a “consumer redress order”) requiring the regulated person to do such things as appear to the Authority necessary for the purposes of—
- (a) remedying the consequences of the contravention, or
 - (b) preventing a contravention of the same or a similar kind from being repeated.
- (3) A consumer redress order must specify the following—
- (a) the regulated person to whom the order applies;
 - (b) the contravention in respect of which the order is made;
 - (c) the affected consumers, or a description of such consumers;
 - (d) the requirements imposed by the order;
 - (e) the date by which the regulated person must comply with such requirements.
- (4) As soon as practicable after making a consumer redress order, the Authority must—
- (a) serve a copy of the order on the regulated person to whom the order applies, and
 - (b) either—
 - (i) serve a copy of the order on each affected consumer, or
 - (ii) publish the order in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of affected consumers.
- (5) The date specified in a consumer redress order under subsection (3)(e) may not be earlier than the end of the period of 7 days from the date of the service of a copy of the order on the regulated person.
- (6) Different dates may be specified under subsection (3)(e) in relation to different requirements imposed by the order.
- (7) This section is subject to sections 27H to 27O.
- (8) In this section and in sections 27H to 27O—
 “affected consumers”, in relation to a consumer redress order (or proposed order), are those consumers that the Authority is satisfied have suffered loss or damage, or been caused inconvenience, as a

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result of the contravention in respect of which the order is (or would be) made;

“consumers” means consumers in relation to electricity conveyed by distribution systems or transmission systems;

“consumer redress order” means an order under subsection (2).

27H Remedial action under a consumer redress order

- (1) The things mentioned in section 27G(2) that a regulated person may be required to do under a consumer redress order (“the required remedial action”) include, in particular—
 - (a) paying an amount to each affected consumer by way of compensation for the loss or damage suffered, or for the inconvenience caused, as a result of the contravention;
 - (b) preparing and distributing a written statement setting out the contravention and its consequences;
 - (c) terminating or varying any contracts entered into between the regulated person and affected consumers.
- (2) Where the required remedial action includes the payment of compensation, the order must specify—
 - (a) the amount of compensation to be paid, and
 - (b) the affected consumers, or a description of such consumers, to whom it is to be paid.
- (3) Where the required remedial action includes the preparation and distribution of a statement, the order may specify the information to be contained in the statement and the form and manner in which it is to be distributed.
- (4) The manner so specified may in particular include—
 - (a) sending a copy of the statement to each affected consumer;
 - (b) publishing the statement in such manner as the Authority considers appropriate for the purpose of bringing the statement to the attention of those consumers.
- (5) Where the required remedial action includes the termination or variation of a contract with an affected consumer—
 - (a) the order may specify the terms on which the contract is to be terminated or the way in which it is to be varied,
 - (b) the requirement has effect only if, and to the extent that, the affected consumer consents to the termination of the contract on those terms or to its variation in that way, and
 - (c) the order may specify the steps to be taken by the regulated person for the purpose of enabling the affected consumer to give such consent.

27I Other procedural requirements in relation to consumer redress orders

- (1) Before making a consumer redress order the Authority must give notice stating that it proposes to make the order.
- (2) A notice under subsection (1) must specify—

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- (a) the regulated person to whom the order will apply,
 - (b) the contravention in respect of which the order is to be made,
 - (c) the affected consumers, or a description of such consumers,
 - (d) the requirements to be imposed by the order and the period within which such requirements are to be complied with, and
 - (e) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed order may be made,
- and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (3) Before varying any proposal stated in a notice under subsection (1) the Authority must give notice specifying—
- (a) the proposed variation and the reasons for it, and
 - (b) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed variation may be made,
- and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (4) Before revoking a consumer redress order the Authority must give notice—
- (a) stating that it proposes to revoke the order and the reasons for doing so, and
 - (b) specifying the time (not being less than 21 days from the relevant date) within which representations or objections to the proposed revocation may be made,
- and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (5) A notice required to be given under this section is to be given—
- (a) by serving a copy of the notice on the regulated person, and
 - (b) either—
 - (i) by serving a copy of the notice on each affected consumer, or
 - (ii) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of affected consumers.
- (6) The “relevant date”, in relation to a notice under this section, is—
- (a) in a case where the notice is published in accordance with subsection (5)(b)(ii), the date on which it is published;
 - (b) in any other case, the latest date on which a copy of the notice is served in accordance with subsection (5)(a) and (b)(i).

27J Statement of policy with respect to consumer redress orders

- (1) The Authority must prepare and publish a statement of policy with respect to—
- (a) the making of consumer redress orders, and

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- (b) the determination of the requirements to be imposed by such orders (including, in particular, the considerations the Authority will have regard to in determining such requirements).
- (2) The Authority must have regard to its current statement of policy—
 - (a) in deciding whether to make a consumer redress order in respect of a contravention, and
 - (b) in determining the requirements to be imposed by any such order.
- (3) The Authority may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) Publication under this section is to be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority must consult such persons as it considers appropriate when preparing or revising its statement of policy.

27K Time limits for making consumer redress orders

- (1) Where no final or provisional order has been made in relation to a contravention, the Authority may not give a consumer redress order in respect of the contravention later than the end of the period of 5 years from the time of the contravention.
- (2) Subsection (1) does not apply if before the end of that period—
 - (a) the notice under section 27I(1) relating to the order is served on the regulated person, or
 - (b) a notice relating to the contravention is served on the regulated person under section 28(2).
- (3) Where a final or provisional order has been made in relation to a contravention, the Authority may give a consumer redress order in respect of the contravention only if the notice relating to the consumer redress order under section 27I(1) is served on the regulated person—
 - (a) within 3 months from the confirmation of the provisional order or the making of the final order, or
 - (b) where the provisional order is not confirmed, within 6 months from the making of the provisional order.

27L Enforcement of consumer redress orders

- (1) Compliance with a consumer redress order is enforceable by civil proceedings by the Authority—
 - (a) for an injunction or interdict,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
 - (c) for any other appropriate remedy or relief.
- (2) Proceedings under subsection (1) are to be brought—
 - (a) in England and Wales, in the High Court, or
 - (b) in Scotland, in the Court of Session.

Status: This is the original version (as it was originally enacted).

- (3) The obligation of a regulated person to comply with a consumer redress order is a duty owed to any person who may be affected by a contravention of the order.
- (4) Without limiting the Authority's right to bring civil proceedings under subsection (1), a duty owed to any person ("P") by virtue of subsection (3) may be enforced by civil proceedings by P for any appropriate remedy or relief.
- (5) For the purposes of subsection (4), the duty owed to P may in particular be enforced by P as if it were contained in a contract between P and the regulated person who owes the duty.

27M Appeals against consumer redress orders

- (1) A regulated person in respect of whom a consumer redress order is made may make an application to the court under this section if the person is aggrieved by—
 - (a) the making of the order, or
 - (b) any requirement imposed by the order.
- (2) An application under subsection (1) must be made within 42 days from the date of service on the regulated person of a copy of the order under section 27G(4)(a).
- (3) On an application under subsection (1) the court may—
 - (a) quash the order or any provision of the order, or
 - (b) vary any such provision in such manner as the court considers appropriate.
- (4) The court may exercise the powers under subsection (3) only if it considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the following grounds—
 - (a) that the making of the order was not within the power of the Authority under section 27G;
 - (b) that any of the requirements under sections 27G(4) and 27I have not been complied with in relation to the making of the order and the interests of the regulated person have been substantially prejudiced by the non-compliance;
 - (c) that it was unreasonable of the Authority to require something to be done under the order (whether at all or in accordance with the provisions of the order).
- (5) If an application is made under this section in relation to a consumer redress order, a requirement imposed by the order does not need to be carried out in accordance with the order until the application has been determined.
- (6) Where the court substitutes a lesser amount of compensation for an amount required by the Authority in a consumer redress order, it may require the payment of interest on the substituted amount at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which any compensation under a consumer redress order is to be paid a date before the determination of the

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application under this section, it may require the payment of interest on the amount from that date at such rate as it considers just and equitable.

- (8) Except as provided by this section, the validity of a consumer redress order is not to be questioned by any legal proceedings whatever.
- (9) In this section “the court” means—
- (a) in relation to England and Wales, the High Court;
 - (b) in relation to Scotland, the Court of Session.

27N Consumer redress orders: miscellaneous

- (1) If—
- (a) compensation is required to be paid under a consumer redress order, and
 - (b) it is not paid by the date by which it is required to be paid in accordance with the order,
- the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) The Authority may not make a consumer redress order where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
- (3) The Authority’s power to make a consumer redress order as a result of a contravention of a relevant condition or requirement is not to be taken as limiting the Authority’s power to impose a penalty under section 27A in relation to the same contravention (whether instead of, or in addition to, making a consumer redress order).
- (4) The power of the Authority to make a consumer redress order is not exercisable in respect of any contravention before the coming into force of Schedule 14 to the Energy Act 2013.

27O Maximum amount of penalty or compensation

- (1) The maximum amount of penalty that may be imposed on a regulated person in respect of a contravention may not exceed 10 per cent of the person’s turnover.
- (2) The maximum amount of compensation that a regulated person may be required to pay in respect of a contravention may not exceed 10 per cent of the person’s turnover.
- (3) Subsections (1) and (2) are subject to subsection (4) if, in respect of a contravention, both a penalty is imposed and compensation is required to be paid.
- (4) The maximum amount in total of the penalty and compensation combined in respect of the contravention may not exceed 10 per cent of the turnover of the regulated person.
- (5) The Secretary of State may by order provide for how a person’s turnover is to be determined for the purposes of this section.

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- (6) An order under subsection (5) may make different provision for penalties and compensation.
- (7) An order under subsection (5) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (8) In this section—
“compensation” means compensation that a regulated person is required to pay by a consumer redress order;
“penalty” means a penalty imposed on a regulated person under section 27A.”
- (3) In section 27A (penalties), for subsections (8) and (9) substitute—
“(8A) This section is subject to section 27O (maximum amount of penalty or compensation that may be imposed).”
- (4) In the title of section 27E, after “Appeals” insert “against penalties”.
- (5) In section 28 (power to require information), in subsection (1) for “27F” substitute “27O”.
- (6) In section 106 (regulations and orders), in subsection (2)(b) for “27A” substitute “27O”.
- (7) An order under section 27A(8) of EA 1989 that is in force immediately before the coming into force of this paragraph—
(a) is, on the coming into force of this paragraph, to have effect as if made in accordance with section 27O(5) of that Act (as inserted by this paragraph), and
(b) is to be taken as applying in relation to a requirement to pay compensation imposed by a consumer redress order made under section 27G of that Act (as inserted by this paragraph) as it applies in relation to a penalty imposed under section 27A of that Act.