



# Consumer Credit Act 1974

## 1974 CHAPTER 39

### PART III

#### LICENSING OF CREDIT AND HIRE BUSINESSES

##### *Licensing principles*

#### **21 Businesses needing a licence.**

- (1) Subject to this section, a licence is required to carry on a consumer credit business or consumer hire business.
- (2) A local authority does not need a licence to carry on a business.
- (3) A body corporate empowered by a public general Act naming it to carry on a business does not need a licence to do so.

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

- C1** S. 21 restricted (1.1.1993) by S.I. 1992/3218, **reg. 5(1)(c)**  
S. 21 excluded (1.1.1996) by S.I. 1995/3275, **reg. 5(1)(b)**  
S. 21 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)**

#### **22 Standard and group licences.**

- (1) A licence may be—
  - (a) a standard licence, that is a licence, issued by the Director to a person named in the licence on an application made by him, which, during the prescribed period, covers such activities as are described in the licence, or
  - (b) a group licence, that is a licence, issued by the Director (whether on the application of any person or of his own motion), which, during such period

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as the Director thinks fit or, if he thinks fit, indefinitely, covers such persons and activities as are described in the licence.

- (2) A licence is not assignable or, subject to section 37, transmissible on death or in any other way.
- (3) Except in the case of a partnership or an unincorporated body of persons, a standard licence shall not be issued to more than one person.
- (4) A standard licence issued to a partnership or an unincorporated body of persons shall be issued in the name of the partnership or body.
- (5) The Director may issue a group licence only if it appears to him that the public interest is better served by doing so than by obliging the persons concerned to apply separately for standard licences.
- (6) The persons covered by a group licence may be described by general words, whether or not coupled with the exclusion of named persons, or in any other way the Director thinks fit.
- (7) The fact that a person is covered by a group licence in respect of certain activities does not prevent a standard licence being issued to him in respect of those activities or any of them.
- (8) A group licence issued on the application of any person shall be issued to that person, and general notice shall be given of the issue of any group licence (whether on application or not).
- [<sup>F1</sup>(9) Subsection (10) applies if a standard licence is issued to an EEA consumer credit firm.
- <sup>F1</sup>(10) The activities described in the licence are not to include an activity for which the firm has, or could obtain, permission under paragraph 15 of Schedule 3 to the Financial Services and Markets Act 2000.]

#### Textual Amendments

**F1** S. 22(9)(10) inserted (1.12.2001) by S.I. 2001/3649, art. 166

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

**C2** S. 22 extended (1.1.1993) by S.I. 1992/3218, reg. 57(1)

S. 22 extended (1.1.1996) by S.I. 1995/3275, reg. 34(1)

## 23 Authorisation of specific activities.

- (1) Subject to this section, a licence to carry on a business covers all lawful activities done in the course of that business, whether by the licensee or other persons on his behalf.
- (2) A licence may limit the activities it covers, whether by authorising the licensee to enter into certain types of agreement only, or in any other way.
- (3) A licence covers the canvassing off trade premises of debtor-creditor-supplier agreements or regulated consumer hire agreements only if, and to the extent that, the licence specifically so provides; and such provision shall not be included in a group licence.

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- (4) Regulations may be made specifying other activities which, if engaged in by or on behalf of the person carrying on a business, require to be covered by an express term in his licence.

## 24 Control of name of business.

A standard licence authorises the licensee to carry on a business under the name or names specified in the licence, but not under any other name.

VALID FROM 16/06/2006

### [<sup>F2</sup>24A Applications for standard licences

- (1) An application for a standard licence shall, in relation to each type of business which is covered by the application, state whether the applicant is applying—
- (a) for the licence to cover the carrying on of that type of business with no limitation; or
  - (b) for the licence to cover the carrying on of that type of business only so far as it falls within one or more descriptions of business.
- (2) An application within subsection (1)(b) in relation to a type of business shall set out the description or descriptions of business in question.
- (3) References in this Part to a type of business are references to a type of business within subsection (4).
- (4) The types of business within this subsection are—
- (a) a consumer credit business;
  - (b) a consumer hire business;
  - (c) a business so far as it comprises or relates to credit brokerage;
  - (d) a business so far as it comprises or relates to debt-adjusting;
  - (e) a business so far as it comprises or relates to debt-counselling;
  - (f) a business so far as it comprises or relates to debt-collecting;
  - (g) a business so far as it comprises or relates to debt administration;
  - (h) a business so far as it comprises or relates to the provision of credit information services;
  - (i) a business so far as it comprises or relates to the operation of a credit reference agency.
- (5) The OFT—
- (a) shall by general notice specify the descriptions of business which can be set out in an application for the purposes of subsection (2) in relation to a type of business;
  - (b) may by general notice provide that applications within subsection (1)(b) cannot be made in relation to one or more of the types of business within subsection (4)(c) to (i).
- (6) The power of the OFT under subsection (5) includes power to make different provision for different cases or classes of case.]

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### Textual Amendments

**F2** S. 24A inserted (16.6.2006 for certain purposes and otherwise 6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {28}, 71(2); [S.I. 2006/1508, art. 3\(1\), Sch. 1](#); [S.I. 2007/3300, art. 3\(2\), Sch. 2](#)

## 25 Licensee to be a fit person.

(1) A standard licence shall be granted on the application of any person if he satisfies the Director that—

- (a) he is a fit person to engage in activities covered by the licence, and
- (b) the name or names under which he applies to be licensed is or are not misleading or otherwise undesirable.

[<sup>F3</sup>(1A) The Director shall refuse an application for the grant of standard licence made by a consumer credit EEA firm if all of the activities described in the licence are activities for which the firm has permission, or could obtain permission, under paragraph 15 of Schedule 3 to the Financial Services and Markets Act 2000.

[<sup>F3</sup>(1B) If an application for the grant of a standard licence—

- (a) is made by a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, and
- (b) relates to a listed activity,

the Financial Services Authority may, if it considers that the Director ought to refuse the application, notify him of that fact.

[<sup>F3</sup>(1C) In subsection (1B) “listed activity” means an activity listed in Annex 1 to the banking consolidation directive (2000/12/EC) or in the Annex to the investment services directive (93/22/EEC) and references to deposits and to their acceptance must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

(2) In determining whether an applicant for a standard licence is a fit person to engage in any activities, the Director shall have regard to any circumstances appearing to him to be relevant, and in particular any evidence tending to show that the applicant, or any of the applicant’s employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the Director to be a controller of the body corporate or an associate of any such person, has—

- (a) committed any offence involving fraud or other dishonesty, or violence,
- (b) contravened any provision made by or under this Act, or by or under any other enactment regulating the provision of credit to individuals or other transactions with individuals,

[<sup>F4</sup>(bb) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);]

- (c) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business, or
- (d) engaged in business practices appearing to the Director to be deceitful or oppressive, or otherwise unfair or improper (whether unlawful or not).

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- (3) In subsection (2), “associate”, in addition to the persons specified in section 184, includes a business associate.

#### Textual Amendments

- F3** S. 25(1A)(1B)(1C) inserted (1.12.2001) by S.I. 2001/3649, art. 167(1)(2)  
**F4** S. 25(2)(bb) inserted (1.12.2001) by S.I. 2001/3649, art. 167(1)(3)

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

- C3** S. 25, 25(2)(b) extended (1.1.1993) by S.I. 1992/3218, reg. 58(1)  
S. 25 modified (1.1.1996) by S.I. 1995/3275, reg. 35

VALID FROM 01/12/2007

#### [<sup>F5</sup>25A Guidance on fitness test

- (1) The OFT shall prepare and publish guidance in relation to how it determines, or how it proposes to determine, whether persons are fit persons as mentioned in section 25.
- (2) If the OFT revises the guidance at any time after it has been published, the OFT shall publish it as revised.
- (3) The guidance 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.
- (4) In preparing or revising the guidance the OFT shall consult such persons as it thinks fit.
- (5) In carrying out its functions under this Part the OFT shall have regard to the guidance as most recently published.]

#### Textual Amendments

- F5** S. 25A inserted (1.12.2007) by Consumer Credit Act 2006 (c. 14), ss. {30}, 71(2) (with Sch. 3 para. 19); S.I. 2007/3300, art. 3(1), Sch. 1

#### [<sup>F6</sup>26 Conduct of business

- (1) Regulations may be made as to—
  - (a) the conduct by a licensee of his business; and
  - (b) the conduct by a consumer credit EEA firm of its business in the United Kingdom.
- (2) The regulations may in particular specify—
  - (a) the books or other records to be kept by any person to whom the regulations apply;
  - (b) the information to be furnished by such a person to those persons with whom—
    - (i) that person does business, or

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(ii) that person seeks to do business,  
 and the way in which that information is to be furnished.]

#### Textual Amendments

**F6** S. 26 substituted (1.12.2001) by S.I. 2001/3649, art. 168

#### Issue of licences

### 27 Determination of applications.

- (1) Unless the Director determines to issue a licence in accordance with an application he shall, before determining the application, by notice—
  - (a) inform the applicant, giving his reasons, that, as the case may be, he 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 Director representations in support of his application in accordance with section 34.
- (2) If the Director grants the application in terms different from those applied for then, whether or not the applicant appeals, the Director shall issue the licence in the terms approved by him unless the applicant by notice informs him that he does not desire a licence in those terms.

VALID FROM 06/04/2008

#### [<sup>F7</sup>27A Consumer credit EEA firms

- (1) Where—
  - (a) a consumer credit EEA firm makes an application for a standard licence, and
  - (b) the activities covered by the application are all permitted activities,
 the OFT shall refuse the application.
- (2) Subsection (3) applies where—
  - (a) a consumer credit EEA firm makes an application for a standard licence; and
  - (b) some (but not all) of the activities covered by the application are permitted activities.
- (3) In order to be entitled to be issued with a standard licence in accordance with section 25(1) to (1AB) in relation to a type of business, the firm need not satisfy the OFT that it is a fit person to carry on that type of business so far as it would involve any of the permitted activities covered by the application.
- (4) A standard licence held by a consumer credit EEA firm does not at any time authorise the carrying on of an activity which is a permitted activity at that time.
- (5) In this section ‘permitted activity’ means, in relation to a consumer credit EEA firm, an activity for which the firm has, or could obtain, permission under paragraph 15 of Schedule 3 to the Financial Services and Markets Act 2000.]

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#### Textual Amendments

- F7** S. 27A inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {33(5)}, 71(2); [S.I. 2007/3300](#), [art. 3\(2\)](#), Sch. 2

## 28 Exclusion from group licence.

Where the Director is minded to issue a group licence (whether on the application of any person or not), and in doing so to exclude any person from the group by name, he shall, before determining the matter,—

- (a) give notice of that fact to the person proposed to be excluded, giving his reasons, and
- (b) invite that person to submit to the Director representations against his exclusion in accordance with section 34.

VALID FROM 16/06/2006

### *Charges for indefinite licences<sup>F8</sup>*

#### Textual Amendments

- F8** S. 28B inserted (16.6.2006 for certain purposes and otherwise 6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {36}, 71(2); [S.I. 2006/1508](#), [art. 3\(1\)](#), Sch. 1; [S.I. 2007/3300](#), [art. 3\(2\)](#), Sch. 2

#### **[<sup>F9</sup>28A Charges to be paid by licensees etc. before end of payment periods**

- (1) The licensee under a standard licence which has effect indefinitely shall, before the end of each payment period of his, pay the OFT a charge towards the costs of carrying out its functions under this Act.
- (2) The original applicant for a group licence which has effect indefinitely shall, before the end of each payment period of his, pay the OFT such a charge.
- (3) The amount of the charge payable by a person under subsection (1) or (2) before the end of a payment period shall be determined in accordance with provision which—
  - (a) is made by the OFT by general notice; and
  - (b) is current on such day as may be determined in accordance with provision made by regulations.
- (4) The provision that may be made by the OFT under subsection (3)(a) includes—
  - (a) different provision in relation to persons of different descriptions (including persons whose payment periods end at different times);
  - (b) provision for no charge at all to be payable by persons of specified descriptions.
- (5) The approval of the Secretary of State and the Treasury is required for a general notice under subsection (3)(a).
- (6) For the purposes of this section a person's payment periods are to be determined in accordance with provision made by regulations.



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#### Textual Amendments

- F9** S. 28A and preceding cross-heading inserted (16.6.2006 for certain purposes and otherwise 6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {35}, 71(2); [S.I. 2006/1508](#), [art. 3\(1\)](#), Sch. 1; [S.I. 2007/3300](#), [art. 3\(2\)](#), Sch. 2

#### [<sup>F8</sup> 28B] Extension of period to pay charge under s. 28A

- (1) A person who is required under section 28A to pay a charge before the end of a period may apply once to the OFT for that period to be extended.
- (2) The application shall be made before such day as may be determined in accordance with provision made by the OFT by general notice.
- (3) If the OFT is satisfied that there is a good reason—
  - (a) why the applicant has not paid that charge prior to his making of the application, and
  - (b) why he cannot pay that charge before the end of that period,
 it may, if it thinks fit, by notice to him extend that period by such time as it thinks fit having regard to that reason.
- (4) The power of the OFT under this section to extend a period in relation to a charge—
  - (a) includes the power to extend the period in relation to a part of the charge only;
  - (b) may be exercised even though the period has ended.]

#### Textual Amendments

- F9** S. 28A and preceding cross-heading inserted (16.6.2006 for certain purposes and otherwise 6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {35}, 71(2); [S.I. 2006/1508](#), [art. 3\(1\)](#), Sch. 1; [S.I. 2007/3300](#), [art. 3\(2\)](#), Sch. 2

VALID FROM 06/04/2008

#### [<sup>F10</sup> 28C] Failure to pay charge under s. 28A

- (1) This section applies if a person (the ‘defaulter’) fails to pay a charge—
  - (a) before the end of a period (the ‘payment period’) as required under section 28A; or
  - (b) where the payment period is extended under section 28B, before the end of the payment period as extended (subject to subsection (2)).
- (2) Where the payment period is extended under section 28B in relation to a part of the charge only, this section applies if the defaulter fails—
  - (a) to pay so much of the charge as is not covered by the extension before the end of the payment period disregarding the extension; or
  - (b) to pay so much of the charge as is covered by the extension before the end of the payment period as extended.



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- (3) Subject to subsection (4), if the charge is a charge under section 28A(1), the defaulter's licence terminates.
- (4) If the defaulter has applied to the OFT under section 28B for the payment period to be extended and that application has not been determined—
  - (a) his licence shall not terminate before the application has been determined and the OFT has notified him of the determination; and
  - (b) if the OFT extends the payment period on that application, this section shall have effect accordingly.
- (5) If the charge is a charge under section 28A(2), the charge shall be recoverable by the OFT.]]

#### Textual Amendments

- F9** S. 28A and preceding cross-heading inserted (16.6.2006 for certain purposes and otherwise 6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {35}, 71(2); [S.I. 2006/1508, art. 3\(1\)](#), Sch. 1; [S.I. 2007/3300, art. 3\(2\)](#), Sch. 2
- F10** S. 28C inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {37(1)}, 71(2); [S.I. 2007/3300, art. 3\(2\)](#), Sch. 2

### *Renewal, variation, suspension and revocation of licences*

#### **29 Renewal.**

- (1) If the licensee under a standard licence, or the original applicant for, or any licensee under, a group licence of limited duration, wishes the Director to renew the licence, whether on the same terms (except as to expiry) or on varied terms, he must, during the period specified by the Director by general notice or such longer period as the Director may allow, make an application to the Director for its renewal.
- (2) The Director may of his own motion renew any group licence.
- (3) The preceding provisions of this Part apply to the renewal of a licence as they apply to the issue of a licence, except that section 28 does not apply to a person who was already excluded in the licence up for renewal.
- (4) Until the determination of an application under subsection (1) and, where an appeal lies from the determination, until the end of the appeal period, the licence shall continue in force, notwithstanding that apart from this subsection it would expire earlier.
- (5) On the refusal of an application under this section, the Director may give directions authorising a licensee to carry into effect agreements made by him before the expiry of the licence.
- (6) General notice shall be given of the renewal of a group licence.

#### **30 Variation by request.**

- (1) On an application made by the licensee, the Director may if he thinks fit by notice to the licensee vary a standard licence in accordance with the application.

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- (2) In the case of a group licence issued on the application of any person, the Director, on an application made by that person, may if he thinks fit by notice to that person vary the terms of the licence in accordance with the application; but the Director shall not vary a group licence under this subsection by excluding a named person, other than the person making the request, unless that named person consents in writing to his exclusion.
- (3) In the case of a group licence from which (whether by name or description) a person is excluded, the Director, on an application made by that person, may if he thinks fit, by notice to that person, vary the terms of the licence so as to remove the exclusion.
- (4) Unless the Director determines to vary a licence in accordance with an application he shall, before determining the application, by notice—
  - (a) inform the applicant, giving his reasons, that he is minded to refuse the application, and
  - (b) invite the applicant to submit to the Director representations in support of his application in accordance with section 34.
- (5) General notice shall be given that a variation of a group licence has been made under this section.

### **31 Compulsory variation.**

- (1) Where at a time during the currency of a licence the Director is of the opinion that, if the licence had expired at that time, he would, on an application for its renewal or further renewal on the same terms (except as to expiry), have been minded to grant the application but on different terms, and that therefore the licence should be varied, he shall proceed as follows.
- (2) In the case of a standard licence the Director shall, by notice—
  - (a) inform the licensee of the variations the Director is minded to make in the terms of the licence, stating his reasons, and
  - (b) invite him to submit to the Director representations as to the proposed variations in accordance with section 34.
- (3) In the case of a group licence the Director shall—
  - (a) give general notice of the variations he is minded to make in the terms of the licence, stating his reasons, and
  - (b) in the notice invite any licensee to submit to him representations as to the proposed variations in accordance with section 34.
- (4) In the case of a group licence issued on application the Director shall also—
  - (a) inform the original applicant of the variations the Director is minded to make in the terms of the licence, stating his reasons, and
  - (b) invite him to submit to the Director representations as to the proposed variations in accordance with section 34.
- (5) If the Director is minded to vary a group licence by excluding any person (other than the original applicant) from the group by name the Director shall, in addition, take the like steps under section 28 as are required in the case mentioned in that section.
- (6) General notice shall be given that a variation of any group licence has been made under this section.

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(7) A variation under this section shall not take effect before the end of the appeal period.

### **32 Suspension and revocation.**

- (1) Where at a time during the currency of a licence the Director is of the opinion that if the licence had expired at that time he would have been minded not to renew it, and that therefore it should be revoked or suspended, he shall proceed as follows.
- (2) In the case of a standard licence the Director shall, by notice—
  - (a) inform the licensee that, as the case may be, the Director is minded to revoke the licence, or suspend it until a specified date or indefinitely, stating his reasons, and
  - (b) invite him to submit representations as to the proposed revocation or suspension in accordance with section 34.
- (3) In the case of a group licence the Director shall—
  - (a) give general notice that, as the case may be, he is minded to revoke the licence, or suspend it until a specified date or indefinitely, stating his reasons, and
  - (b) in the notice invite any licensee to submit to him representations as to the proposed revocation or suspension in accordance with section 34.
- (4) In the case of a group licence issued on application the Director shall also—
  - (a) inform the original applicant that, as the case may be, the Director is minded to revoke the licence, or suspend it until a specified date or indefinitely, stating his reasons, and
  - (b) invite him to submit representations as to the proposed revocation or suspension in accordance with section 34.
- (5) If he revokes or suspends the licence, the Director may give directions authorising a licensee to carry into effect agreements made by him before the revocation or suspension.
- (6) General notice shall be given of the revocation or suspension of a group licence.
- (7) A revocation or suspension under this section shall not take effect before the end of the appeal period.
- (8) Except for the purposes of section 29, a licensee under a suspended licence shall be treated, in respect of the period of suspension, as if the licence had not been issued; and where the suspension is not expressed to end on a specified date it may, if the Director thinks fit, be ended by notice given by him to the licensee or, in the case of a group licence, by general notice.

### **33 Application to end suspension.**

- (1) On an application made by a licensee the Director may, if he thinks fit, by notice to the licensee end the suspension of a licence, whether the suspension was for a fixed or indefinite period.
- (2) Unless the Director determines to end the suspension in accordance with the application he shall, before determining the application, by notice—
  - (a) inform the applicant, giving his reasons, that he is minded to refuse the application, and

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- (b) invite the applicant to submit to the Director representations in support of his application in accordance with section 34.
- (3) General notice shall be given that a suspension of a group licence has been ended under this section.
- (4) In the case of a group licence issued on application—
  - (a) the references in subsection (1) to a licensee include the original applicant;
  - (b) the Director shall inform the original applicant that a suspension of a group licence has been ended under this section.

VALID FROM 01/12/2007

*Further powers of OFT to regulate conduct of licensees etc.*

VALID FROM 06/04/2008

**[<sup>F11</sup>33A Power of OFT to impose requirements on licensees**

- (1) This section applies where the OFT is dissatisfied with any matter in connection with—
  - (a) a business being carried on, or which has been carried on, by a licensee or by an associate or a former associate of a licensee;
  - (b) a proposal to carry on a business which has been made by a licensee or by an associate or a former associate of a licensee; or
  - (c) any conduct not covered by paragraph (a) or (b) of a licensee or of an associate or a former associate of a licensee.
- (2) The OFT may by notice to the licensee require him to do or not to do (or to cease doing) anything specified in the notice for purposes connected with—
  - (a) addressing the matter with which the OFT is dissatisfied; or
  - (b) securing that matters of the same or a similar kind do not arise.
- (3) A requirement imposed under this section on a licensee shall only relate to a business which the licensee is carrying on, or is proposing to carry on, under the licence under which he is a licensee.
- (4) Such a requirement may be framed by reference to a named person other than the licensee.
- (5) For the purposes of subsection (1) it is immaterial whether the matter with which the OFT is dissatisfied arose before or after the licensee became a licensee.
- (6) If—
  - (a) a person makes an application for a standard licence, and
  - (b) while dealing with that application the OFT forms the opinion that, if such a licence were to be issued to that person, it would be minded to impose on him a requirement under this section,

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the OFT may, before issuing such a licence to that person, do (in whole or in part) anything that it must do under section 33D or 34(1) or (2) in relation to the imposing of the requirement.

- (7) In this section ‘associate’, in addition to the persons specified in section 184, includes a business associate.]

#### Textual Amendments

- F11** S. 33A and preceding cross-heading inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {38}, 71(2) (with Sch. 3 para. 20); [S.I. 2007/3300](#), [art. 3\(2\)](#), Sch. 2

VALID FROM 06/04/2008

#### [<sup>F12</sup>33B Power of OFT to impose requirements on supervisory bodies

- (1) This section applies where the OFT is dissatisfied with the way in which a responsible person in relation to a group licence—
- (a) is regulating or otherwise supervising, or has regulated or otherwise supervised, persons who are licensees under that licence; or
  - (b) is proposing to regulate or otherwise to supervise such persons.
- (2) The OFT may by notice to the responsible person require him to do or not to do (or to cease doing) anything specified in the notice for purposes connected with—
- (a) addressing the matters giving rise to the OFT's dissatisfaction; or
  - (b) securing that matters of the same or a similar kind do not arise.
- (3) A requirement imposed under this section on a responsible person in relation to a group licence shall only relate to practices and procedures for regulating or otherwise supervising licensees under the licence in connection with their carrying on of businesses under the licence.
- (4) For the purposes of subsection (1) it is immaterial whether the matters giving rise to the OFT's dissatisfaction arose before or after the issue of the group licence in question.
- (5) If—
- (a) a person makes an application for a group licence, and
  - (b) while dealing with that application the OFT forms the opinion that, if such a licence were to be issued to that person, it would be minded to impose on him a requirement under this section,
- the OFT may, before issuing such a licence to that person, do (in whole or in part) anything that it must do under section 33D or 34(1) or (2) in relation to the imposing of the requirement.
- (6) For the purposes of this Part a person is a responsible person in relation to a group licence if—
- (a) he is the original applicant for it; and

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- (b) he has a responsibility (whether by virtue of an enactment, an agreement or otherwise) for regulating or otherwise supervising persons who are licensees under the licence.]

#### Textual Amendments

**F12** S. 33B inserted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. {39}, 71(2) (with Sch. 3 para. 21); S.I. 2007/3300, art. 3(2), Sch. 2

VALID FROM 06/04/2008

#### [<sup>F13</sup>33C Supplementary provision relating to requirements

- (1) A notice imposing a requirement under section 33A or 33B may include provision about the time at or by which, or the period during which, the requirement is to be complied with.
- (2) A requirement imposed under section 33A or 33B shall not have effect after the licence by reference to which it is imposed has itself ceased to have effect.
- (3) A person shall not be required under section 33A or 33B to compensate, or otherwise to make amends to, another person.
- (4) The OFT may by notice to the person on whom a requirement has been imposed under section 33A or 33B vary or revoke the requirement (including any provision made under subsection (1) of this section in relation to it) with effect from such date as may be specified in the notice.
- (5) The OFT may exercise its power under subsection (4) in relation to a requirement either on its own motion or on the application of a person falling within subsection (6) or (7) in relation to the requirement.
- (6) A person falls within this subsection in relation to a requirement if he is the person on whom the requirement is imposed.
- (7) A person falls within this subsection in relation to a requirement if—
  - (a) the requirement is imposed under section 33A;
  - (b) he is not the person on whom the requirement is imposed;
  - (c) the requirement is framed by reference to him by name; and
  - (d) the effect of the requirement is—
    - (i) to prevent him being an employee of the person on whom the requirement is imposed;
    - (ii) to restrict the activities that he may engage in as an employee of that person; or
    - (iii) otherwise to prevent him from doing something, or to restrict his doing something, in connection with a business being carried on by that person.]

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#### Textual Amendments

**F13** S. 33C inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {40}, 71(2); [S.I. 2007/3300](#), [art. 3\(2\)](#), Sch. 2

VALID FROM 06/04/2008

#### [<sup>F14</sup>33D Procedure in relation to requirements

- (1) Before making a determination—
  - (a) to impose a requirement on a person under section 33A or 33B,
  - (b) to refuse an application under section 33C(5) in relation to a requirement imposed under either of those sections, or
  - (c) to vary or to revoke a requirement so imposed,the OFT shall proceed as follows.
- (2) The OFT shall give a notice to every person to whom subsection (3) applies in relation to the determination—
  - (a) informing him, with reasons, that it is minded to make the determination; and
  - (b) inviting him to submit to it representations as to the determination under section 34.
- (3) This subsection applies to a person in relation to the determination if he falls within, or as a consequence of the determination would fall within, section 33C(6) or (7) in relation to the requirement in question.
- (4) This section does not require the OFT to give a notice to a person if the determination in question is in the same terms as a proposal made to the OFT by that person (whether as part of an application under this Part or otherwise).]

#### Textual Amendments

**F14** S. 33D inserted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {41}, 71(2); [S.I. 2007/3300](#), [art. 3\(2\)](#), Sch. 2

#### [<sup>F15</sup>33E Guidance on requirements

- (1) The OFT shall prepare and publish guidance in relation to how it exercises, or how it proposes to exercise, its powers under sections 33A to 33C.
- (2) If the OFT revises the guidance at any time after it has been published, the OFT shall publish it as revised.
- (3) The guidance 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.
- (4) In preparing or revising the guidance the OFT shall consult such persons as it thinks fit.



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- (5) In exercising its powers under sections 33A to 33C the OFT shall have regard to the guidance as most recently published.]

#### Textual Amendments

**F15** S. 33E inserted (1.12.2007) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {42}, 71(2) (with Sch. 3 para. 22); [S.I. 2007/3300](#), [art. 3\(2\)](#), Sch. 2

### Miscellaneous

#### 34 Representations to Director.

- (1) Where this section applies to an invitation by the Director to any person to submit representations, the Director 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 Director may allow,—
- (a) to submit his representations in writing to the Director, and
  - (b) to give notice to the Director, if he thinks fit, that he wishes to make representations orally,
- and where notice is given under paragraph (b) the Director shall arrange for the oral representations to be heard.
- (2) In reaching his determination the Director shall take into account any representations submitted or made under this section.
- (3) The Director shall give notice of his 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.

VALID FROM 06/04/2008

#### [<sup>F16</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.

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- (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

**F16** 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

### 35 The register.

- (1) The Director shall establish and maintain a register, in which he 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 force, or have at any time been suspended or revoked, with details of any variation of the terms of a licence;
  - (c) decisions given by him under this Act, and any appeal from those decisions; and
  - (d) such other matters (if any) as he thinks fit.
- [<sup>F17</sup>(1A) The Director 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 Director by the Financial Services Authority for inclusion in the register.]
- (2) The Director 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).

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- (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 Director a copy, certified by the Director to be correct, of any entry in the register.
- (4) The Director may, if he 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 Director 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

**F17** S. 35(1A) inserted (1.12.2001) by S.I. 2001/3649, art. 169

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

**C4** S. 35 extended (1.1.1993) by S.I. 1992/3218, reg. 60

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 Director), the licensee shall give the Director notice of the change; and the Director 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 Director 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.

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- (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) Where the Director is given notice under subsection (1) or (2) of any change, and subsection (5) does not apply, the Director may by notice require the licensee to furnish him with such information, verified in such manner, as the Director may stipulate.

VALID FROM 01/12/2007

### **[<sup>F18</sup>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 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

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- (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
  - (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

**F18** 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

VALID FROM 06/04/2008

#### [<sup>F19</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.

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- (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).]

#### Textual Amendments

**F19** 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

VALID FROM 06/04/2008

#### <sup>F20</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

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- (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—
  - (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

**F20** 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](#)



*Status: Point in time view as at 01/09/2002. This version of this part contains provisions that are not valid for this point in time.*

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VALID FROM 06/04/2008

### **[<sup>F21</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**

**F21** 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](#)

VALID FROM 06/04/2008

### **[<sup>F22</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.

*Status: Point in time view as at 01/09/2002. This version of this part contains provisions that are not valid for this point in time.*

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- (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

**F22** 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

VALID FROM 06/04/2008

#### [<sup>F23</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—
  - (a) he has the approval of the OFT to do so; or

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(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

**F23** 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
  - (c) becomes a patient within the meaning of Part VIII of the <sup>M1</sup>Mental Health Act 1959.
- (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), 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.

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

**C5** S. 37(1) amended by S.I. 1976/1002, reg. 3 (as substituted by S.I. 1981/614, reg. 2(b))

#### Marginal Citations

**M1** 1959 c. 72.

### 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

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- (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 Director or a licensee notice under section 36 within the period required commits an offence.

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

- C6** 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)

VALID FROM 06/04/2008

#### <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—

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- (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

VALID FROM 06/04/2008

#### [<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.
- (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)

VALID FROM 01/12/2007

#### [<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.

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- (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.

- (1) A regulated agreement, other than a non-commercial agreement, if made when the creditor or owner was unlicensed, is enforceable against the debtor or hirer only where the Director has made an order under this section which applies to the agreement.
- (2) Where during any period an unlicensed person (the “trader”) was carrying on a consumer credit business or consumer hire business, he or his successor in title may apply to the Director for an order that regulated agreements made by the trader during that period are to be treated as if he had been licensed.
- (3) Unless the Director determines to make an order under subsection (2) in accordance with the application, he shall, before determining the application, by notice—
  - (a) inform the applicant, giving his reasons, that, as the case may be, he 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 Director 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 Director shall consider, in addition to any other relevant factors—
  - (a) how far, if at all, debtors or hirers under regulated agreements made by the trader during that period were prejudiced by the trader’s conduct,
  - (b) whether or not the Director would have been likely to grant a licence covering that period on an application by the trader, and
  - (c) the degree of culpability for the failure to obtain a licence.
- (5) If the Director thinks fit, he may in an order under subsection (2)—

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- (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.

[<sup>F27</sup>(6) This section does not apply to a regulated agreement, other than a non-commercial agreement, 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.]

#### Textual Amendments

**F27** S. 40(6) inserted (1.12.2001) by S.I. 2001/3649, art. 170

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

**C7** 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)

### <sup>F28</sup>41 Appeals to Secretary of State under Part III.

- (1) If, in the case of a determination by the Director such as is mentioned in column 1 of the table set out at the end of this section, a person mentioned in relation to that determination in column 2 of the table is aggrieved by the determination he may, within the prescribed period, and in the prescribed manner, appeal to the Secretary of State.
- (2) Regulations may make provision as to the persons by whom (on behalf of the Secretary of State) appeals under this section are to be heard, the manner in which they are to be conducted, and any other matter connected with such appeals.
- (3) On an appeal under this section, the Secretary of State may give such directions for disposing of the appeal as he thinks just, including a direction for the payment of costs by any party to the appeal.
- (4) A direction under subsection (3) for payment of costs may be made a rule of the High Court on the application of the party in whose favour it is given.
- (5) In Scotland a direction under subsection (3) for payment of expenses may be enforced in like manner as recorded decree arbitral.

TABLE

Determination	Appellant
Refusal to issue, renew or vary licence in accordance with terms of application.	The applicant.
Exclusion of person from group licence.	The person excluded.
Refusal to give directions in respect of a licensee under section 29(5) or 32(5).	The licensee.
Compulsory variation, or suspension or revocation, of standard licence.	The licensee.



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Compulsory variation, or suspension or revocation, of group licence.	The original applicant or any licensee.
Refusal to end suspension of licence in accordance with terms of application.	The applicant.
Refusal to make order under section 40(2) in accordance with terms of application.	The applicant.
[ <sup>F29</sup> Imposition of, or refusal to withdraw, consumer credit prohibition under section 203 of the Financial Services and Markets Act 2000.	The consumer credit EEA firm concerned.
Imposition of, or refusal to withdraw, a restriction under section 204 of the Financial Services and Markets Act 2000.	The consumer credit EEA firm concerned.]

#### Textual Amendments

- F28** By S.I. 1992/3218, reg. 18(6), **Sch. 5 para. 5** it is provided that section 41 shall have effect (1.1.1993) as if -(a) the following determinations were mentioned in column 1 of the table set out at the end of that section, namely -(i) imposition of a prohibition or restriction or the variation of a restriction; and(ii) refusal of an application for the revocation of a prohibition or restriction; and (b) the European institution concerned were mentioned in column 2 of that table in relation to those determinations
- F29** Entries in s. 41 Table inserted (1.12.2001) by S.I. 2001/3649, **art. 171**

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

- C8** S. 41 extended (1.1.1996) by S.I. 1996/3275, reg. 15(6), **sch. 5 para. 5**  
S. 41 applied (with modifications) (1.12.2001) by 2000 c. 8, s. 203(8), **Sch. 16 para. 5**; S.I. 2001/3538, **art. 2(1)**

42 <sup>F30</sup> .....

#### Textual Amendments

- F30** S. 42 repealed (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), **Sch. 4 Pt. I.**

VALID FROM 01/12/2007

[<sup>F31</sup>Appeals<sup>F32</sup>]

#### Textual Amendments

- F31** S. 40A and preceding cross-heading inserted (1.12.2007 for specified purposes and 6.4.2008 for further specified purposes and otherwise prosp.) by Consumer Credit Act 2006 (c. 14), ss. {55(1)}, 71(2) (with Sch. 3 para. 25); S.I. 2007/3300, **art. 3(1){(2)}**, Schs. 1, 2

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**F32** S. 41A inserted (1.12.2007 for specified purposes and otherwise 6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 57**, 71(2); [S.I. 2007/3300](#), **art. 3(1)**, 3(2), **Sch. 1**, **Sch. 2**

**[<sup>F31</sup>40A The Consumer Credit Appeals Tribunal**

- (1) There shall be a tribunal known as the Consumer Credit Appeals Tribunal ('the Tribunal').
- (2) The Tribunal shall have the functions conferred on it by or under this Part.
- (3) The Lord Chancellor may by rules make such provision as he thinks fit for regulating the conduct and disposal of appeals before the Tribunal.
- (4) Schedule A1 (which makes provision about the Tribunal and proceedings before it) shall have effect.
- (5) But that Schedule does not limit the Lord Chancellor's powers under subsection (3).]

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

**C9** S. 40A applied (15.12.2007) by [The Money Laundering Regulations 2007 \(S.I. 2007/2157\)](#), **reg. 44(5)**

VALID FROM 01/09/2009

**[<sup>F33</sup>41ZA Tribunal Procedure Rules: suspension of OFT determinations**

In the case of appeals to the First-tier Tribunal under section 41, Tribunal Procedure Rules may make provision for the suspension of determinations of the OFT.

**Textual Amendments**

**F33** Ss. 41ZA, 41ZB inserted (1.9.2009) by [The Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009 \(S.I. 2009/1835\)](#), **arts. 1**, 4(1), **Sch. 1 para. 5** (with **Sch. 4**)

VALID FROM 01/09/2009

**41ZB Disposal of appeals**

- (1) The First-tier Tribunal shall decide an appeal under section 41 by way of a rehearing of the determination appealed against.
- (2) In disposing of an appeal under section 41 the First-tier Tribunal may do one or more of the following—
  - (a) confirm the determination appealed against;
  - (b) quash that determination;
  - (c) vary that determination;

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- (d) remit the matter to the OFT for reconsideration and determination in accordance with the directions (if any) given to it by the tribunal;
  - (e) give the OFT directions for the purpose of giving effect to its decision.
- (3) In the case of an appeal under section 41 against a determination to impose a penalty, the First-tier Tribunal—
- (a) has no power by virtue of subsection (2)(c) to increase the penalty;
  - (b) may extend the period within which the penalty is to be paid (including in cases where that period has already ended).
- (4) Subsection (3) does not affect—
- (a) the tribunal's power to give directions to the OFT under subsection (2)(d); or
  - (b) what the OFT can do where a matter is remitted to it under subsection (2)(d).
- (5) Where the First-tier Tribunal remits a matter to the OFT, it may direct that the requirements of section 34 of this Act are not to apply, or are only to apply to a specified extent, in relation to the OFT's reconsideration of the matter.
- (6) Subject to subsections (7) and (8), where the First-tier Tribunal remits an application to the OFT, section 6(1) and (3) to (9) of this Act shall apply as if the application had not been previously determined by the OFT.
- (7) In the case of a general notice which came into effect after the determination appealed against was made but before the application was remitted, the applicant shall provide any information or document which he is required to provide under section 6(6) within—
- (a) the period of 28 days beginning with the day on which the application was remitted; or
  - (b) such longer period as the OFT may allow.
- (8) In the case of—
- (a) any information or document which was superseded,
  - (b) any change in circumstances which occurred, or
  - (c) any error or omission of which the applicant became aware,
- after the determination appealed against was made but before the application was remitted, any notification that is required to be given by the applicant under section 6(7) shall be given within the period of 28 days beginning with the day on which the application was remitted.]

#### Textual Amendments

**F33** Ss. 41ZA, 41ZB inserted (1.9.2009) by [The Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009 \(S.I. 2009/1835\)](#), arts. 1, 4(1), **Sch. 1 para. 5** (with Sch. 4)

#### [<sup>F32</sup>41A Appeals from the Consumer Credit Appeals Tribunal

- (1) A party to an appeal to the Tribunal may with leave appeal—
- (a) in England and Wales and Northern Ireland, to the Court of Appeal, or
  - (b) in Scotland, to the Court of Session,

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on a point of law arising from a decision of the Tribunal.

- (2) For the purposes of subsection (1) leave to appeal may be given by—
  - (a) the Tribunal; or
  - (b) the Court of Appeal or the Court of Session.
- (3) An application for leave to appeal may be made to the Court of Appeal or the Court of Session only if the Tribunal has refused such leave.
- (4) If on an appeal under this section the court considers that the decision of the Tribunal was wrong in law, it may do one or more of the following—
  - (a) quash or vary that decision;
  - (b) substitute for that decision a decision of its own;
  - (c) remit the matter to the Tribunal for rehearing and determination in accordance with the directions (if any) given to it by the court.
- (5) An appeal may be brought from a decision of the Court of Appeal under this section only if leave to do so is given by the Court of Appeal or the House of Lords.
- (6) Rules under section 40A(3) may make provision for regulating or prescribing any matters incidental to or consequential on an appeal under this section.
- (7) In this section ‘party’ means, in relation to an appeal to the Tribunal, the appellant or the OFT.]

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

**C10** S. 41A applied (15.12.2007) by [The Money Laundering Regulations 2007 \(S.I. 2007/2157\)](#), **reg. 44(5)**

**Status:**

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