

CONSUMER CREDIT ACT 2006

EXPLANATORY NOTES

CIVIL PENALTIES

Section 52: Power of OFT to impose civil penalties

88. *Section 52* inserts a new section 39A after section 39 of the 1974 Act. Section 39A confers a power on OFT to impose civil penalties on persons who do not comply with a requirement imposed by OFT under the new sections 33A, 33B or 36A inserted in the 1974 Act by sections 38, 39 and 45 of the 2006 Act. If a person has failed to comply with such a requirement, then OFT may, by giving the person a penalty notice, impose on him a penalty of up to £50,000. A person who commits such a breach is called a “defaulter”.
89. A penalty notice must state the amount of the penalty that is being imposed, set out OFT’s reasons for determining to impose a penalty for that amount, specify how the payment of the penalty may be made and specify the period within which the penalty is required to be paid to OFT (which must not be earlier than the end of the period during which an appeal may be brought against the imposition of the penalty). The defaulter is required to pay the penalty in the manner specified in the penalty notice.
90. The maximum penalty that may be imposed by OFT is £50,000 for every breach of a requirement. In determining whether to impose a penalty, OFT must have regard to its published statement of policy (see notes in relation of section 54 below) and any penalty or fine that has already been imposed on the defaulter by any other body in relation to the conduct the subject of the penalty. OFT must also have regard to any other steps which it has taken or it might take in relation to the conduct in question (for example, revocation or suspension of a licence) (see notes in respect of section 53 below). If the defaulter does not pay the penalty, OFT may recover it and the unpaid balance will incur interest.

Section 53: Further provision relating to civil penalties

91. *Section 53* inserts a new section 39B after the new section 39A (inserted into the 1974 Act by section 52). Before determining to impose a penalty on a person, OFT must give a notice to that person which informs him that it is minded to impose a penalty on him. That notice must also state the proposed amount of the penalty, set out OFT’s reasons for being minded to impose a penalty and for proposing that amount and the proposed period for the payment of the penalty, and invite him to make representations in accordance with section 34 of the 1974 Act. The maximum penalty may be changed by an order of the Secretary of State (approved by a resolution of both Houses of Parliament).
92. OFT must give a general notice of the imposition of a penalty on a person who is a responsible person in relation to a group licence, which must state the amount of the penalty that is being imposed and set out OFT’s reasons for determining to impose a penalty and for specifying that amount. A person may appeal in relation to the decision of OFT to impose a civil penalty.

Section 54: Statement of policy in relation to civil penalties

93. *Section 54* inserts a new section 39C after the new section 39B (inserted into the 1974 Act by section 53). Section 39C requires OFT to prepare and publish a statement of policy as regards the exercise of its powers in relation to penalties under section 39A. In imposing any penalty, OFT must have regard to the statement of policy and it cannot impose a penalty until it has published the statement of policy. OFT may revise the statement of policy at any time after it has been published and must publish it as revised. In preparing or revising the statement, OFT must consult such persons as it thinks fit. OFT cannot publish a statement of policy without the approval of the Secretary of State and it must publish it in such manner as it thinks fit for the purpose of bringing it to the attention of those likely to be affected by it.