

CONSUMER CREDIT ACT 2006

EXPLANATORY NOTES

FURTHER POWERS OF OFT TO REGULATE CONDUCT OF LICENSEES ETC.

Section 38: Power of OFT to impose requirements on licensees

68. *Section 38* inserts a new section 33A after section 33 of the 1974 Act. Section 33A provides OFT with a new intermediate power (additional to existing powers of revocation, suspension or variation of a licence) to impose requirements on licensees. OFT may impose a requirement in relation to a business carried on (or proposed to be carried on) under the licence where it is dissatisfied with any matter in connection with:
- a business being carried on, or which has been carried on, by a licensee or associate or former associate of the licensee;
 - a proposal made by a licensee, or associate or former associate of the licensee, to carry on a business; or
 - any other conduct of such a person,
- whether occurring before or after the person became a licensee.
69. OFT may, by notice, require the licensee to do or not to do (or cease doing) anything specified in the notice to address the matter with which OFT is dissatisfied or to ensure that the same or similar matters do not arise. The requirement must relate to a business that the licensee is carrying on, or is proposing to carry on, under the licence. OFT may take action to impose a requirement whilst dealing with an application for a licence to be issued.

Section 39: Power of OFT to impose requirements on supervisory bodies

70. *Section 39* inserts a new section 33B after the new section 33A (inserted into the 1974 Act by section 38). Section 33B deals with the power of OFT to impose requirements on the responsible person in relation to a group licence where OFT is dissatisfied with the manner in which that person is regulating or otherwise supervising, or proposes to regulate or supervise, licensees under that licence. A requirement imposed under this provision may only relate to the practices and procedures of the responsible person for regulating or otherwise supervising licensees under the licence in connection with their carrying on of businesses under the licence. A person is a “responsible person” in relation to a group licence if he is the original applicant under it and 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.

Section 40: Supplementary provision relating to requirements

71. *Section 40* inserts a new section 33C after the new section 33B (inserted into the 1974 Act by section 39). Section 33C(3) provides that a person cannot be required under section 33A or 33B to compensate or otherwise make amends to another person. Section 33C gives OFT the power to vary or revoke requirements on its own motion or to do

so on application by the person on whom the requirement has been imposed. It gives the same rights to make an application for the variation or revocation of a requirement to a person who is named in the requirement and prevented from being employed by the person on whom the requirement is imposed, or restricted as to the activities that he may engage in as an employee, or is otherwise prevented or restricted from doing something in connection with the business under the licence (an “affected person” for the purpose of these notes).

Section 41: Procedure in relation to requirements

72. *Section 41* inserts a new section 33D after the new section 33C (inserted into the 1974 Act by section 40). Section 33D sets out the procedure OFT must follow when imposing requirements. When it is minded to impose, vary or revoke a requirement, OFT must give a notice to any person on whom the requirement is or would be imposed and any affected person. The notice should inform him of OFT’s reasons for wishing to impose, vary or revoke the requirement and invite the person to submit representations as to OFT’s proposed determination to impose, vary or revoke the requirement.
73. OFT does not need to issue a notice if the proposed determination is in the same terms as one proposed by the person on whom the requirement is or would be imposed or an affected person (so that if OFT and that person agree on the content of a proposed requirement, the notice procedure is not necessary in relation to that person).

Section 42: Guidance on requirements

74. *Section 42* inserts a new section 33E after the new section 33D (inserted into the 1974 Act by section 41). Section 33E requires OFT to issue guidance as to how it exercises or how it proposes to exercise its powers in relation to the imposition, variation or revocation of requirements. OFT must have regard to this guidance in exercising its powers in relation to requirements.

Section 43: Consequential amendments relating to requirements

75. *Section 43* provides for a right of appeal for persons on whom a requirement is imposed and affected persons against imposition, variation or revocation of a requirement by OFT or refusal by OFT of an application by the appellant for variation or revocation of a requirement. It also provides that requirements and details of their variation will have to be recorded in the public register held by OFT.