

CONSUMER CREDIT ACT 2006

EXPLANATORY NOTES

POWERS AND DUTIES IN RELATION TO INFORMATION

Section 44: Provision of information etc. by applicants

76. *Section 44* deals with the information applicants under the 1974 Act may be required to provide in connection with their application. OFT may require additional information or documents that are relevant to the application, before the application is determined. Where an applicant has made an application to OFT, but it has not been determined, and OFT has published a general notice specifying any additional information required to be provided in connection with future applications then the applicant whose application is pending must provide OFT with that additional information.
77. If any information or document provided by an applicant in relation to his application is superseded or otherwise affected by any change in circumstances, or if any errors come to light during the period from when the application was made but before its determination, the applicant must notify OFT within 28 days of the information or document being superseded, the change in circumstances occurring, or the applicant becoming aware of the error or omission. This does not apply to clerical errors that do not affect the substance of the document, or anything that the applicant must notify OFT about under section 36 (duty to notify changes).

Section 45: Duties to notify changes in information etc.

78. *Section 45* inserts a new section 36A after section 36 of the 1974 Act, which concerns the duty on licensees to notify OFT of certain changes to their circumstances. Section 36A(2) requires licensees to provide OFT with information or documents in respect of a relevant application, where OFT has (after the application has been determined) published a general notice requiring the provision of that information. In this section a relevant application means the original application for a standard or group licence, or an application for the renewal or variation of such a licence.
79. After the determination of a relevant application, the holders of standard licences and original applicants for group licences must inform OFT (within 28 days of their becoming aware) of all documents and information which they have provided under section 6 of the 1974 Act or under this section, which have or has been superseded or otherwise affected by a change in circumstances. Any change of circumstances must fall within a description specified by OFT by general notice that must be relevant to a question of fitness of persons to have a standard licence or the public interest in maintaining a group licence.
80. The same persons must also notify OFT of any errors or omissions in any information or document which they have provided by virtue of section 6 or this section that comes to their attention following determination of a relevant application. Section 36A does not require a licensee to notify OFT of anything that he is already required to notify OFT about under section 36 of the 1974 Act or any clerical error or omission in any information or document that does not affect the substance of the information or document.

Section 46: Power of OFT to require information generally

81. *Section 46* inserts a new section 36B after the new section 36A (inserted into the 1974 Act by section 45). Section 36B allows OFT, on giving notice, to require a person to provide specified information and documents. The notice must set out OFT's reasons for requiring the information and documents. OFT may require such information or documents from the holder of a standard licence and the original applicant for a group licence only if it is reasonably required for the exercise of OFT's functions under the 1974 Act. It may require information from others if a specified act or omission has occurred (or OFT has reason to suspect that a specified act or omission has occurred) and the production of the information or document is reasonably required to enable OFT to take steps under Part 3 of the 1974 Act or to consider whether to do so. Those acts or omissions are specified in section 36B(6).

Section 47: Power of OFT to require access to premises

82. *Section 47* inserts a new section 36C after the new section 36B (inserted into the 1974 Act by section 46). Section 36C allows OFT to issue a notice requiring a licensee under a standard licence or the original applicant for a group licence to ensure that an officer of an enforcement authority (as defined in section 161(1) of the 1974 Act) may enter the specified premises on reasonable notice and at reasonable times for the purposes of observing the licensee's or applicant's carrying on of his business, and to inspect relevant specified documents relating to the licensee's or applicant's business kept at those premises, where it is reasonably required for purposes connected with OFT's functions under the 1974 Act. It may issue such a notice to persons who are licensees under group licences if the acts or omissions set out in section 36B(6) have occurred or OFT has reason to believe they have occurred and the observation or inspection is reasonably required to enable OFT to take a step under Part 3 of the 1974 Act or to consider whether to do so.
83. The licensee must give such access on such days and at such hours as OFT reasonably requires. A licensee is not required to secure access to premises if OFT has not given reasonable notice or the access is sought in respect of premises used solely as a dwelling. An officer of an enforcement authority inspecting a document may require anyone on the premises who is involved in the licensee's business to give him an explanation of that document.

Section 48: Entry to premises under warrant

84. *Section 48* inserts a new section 36D after the new section 36C (inserted into the 1974 Act by section 47). Section 36D allows OFT to obtain a warrant from a justice of the peace or (in Scotland) a sheriff if he is satisfied that there are reasonable grounds for believing that there is on the premises information or documents in relation to which OFT could impose a requirement under section 36B and that, if such a requirement were to be imposed, it would either not be complied with or the information or documents would be tampered with. An officer of an enforcement authority may be authorised to enter and search the specified premises, to seize and detain any information of a description specified in the warrant. The officer may also take such steps as are reasonably necessary to secure the protection of such documents or information, take such persons and equipment with him as he thinks necessary and use such force as reasonably necessary.

Section 49: Failure to comply with information requirement

85. *Section 49* inserts a new section 36E after section 36D (inserted into the 1974 Act by section 48). Section 36E deals with the consequences of failing to comply with an information requirement under the new section 36B or request to gain access to premises under section 36C. OFT may apply to the court for an order to enforce an information requirement or request to gain access to premises. If the information

defaulter is a body corporate, or an unincorporated association, an officer of the body who is wholly or partly responsible for the failure may be required to pay costs or expenses as specified in the court order. If the information defaulter is a partnership, a member of that partnership may be so liable.

Section 50: Officers of enforcement authorities other than OFT

86. *Section 50* inserts a new section 36F after the new section 36E (inserted into the 1974 Act by section 49). Section 36F provides that anything done or not done by an officer of an enforcement authority, other than OFT, acting under sections 36C and 36D, shall be treated as if done or not done by an officer of OFT, other than in respect of any criminal proceedings brought against that officer, his enforcement authority or the OFT in respect of anything done or not done by that officer. Such an officer may not disclose any information that he obtains by virtue of new sections 36C or 36D other than to OFT unless he has OFT's approval or is under a duty to make the disclosure.

Section 51: Consequential amendments relating to information

87. *Section 51* makes certain consequential amendments to the 1974 Act in respect of the sections relating to the provision of information to OFT or other enforcement authority. It extends section 7 of the 1974 Act, which provides that it is an offence for a person knowingly or recklessly to give OFT information that is false or misleading in a material particular, to cover information given under any requirement imposed or other provision made by or under the 1974 Act. The section also provides that breach of a requirement imposed under the new sections 33A and 33B or certain of the information provisions (see new sections 36A to 36C, inserted by sections 45 to 47 of the 2006 Act) will not trigger the powers of entry and inspection under section 162 of the 1974 Act nor will it trigger criminal liability under section 165 of the 1974 Act. The section inserts a new section 174A into the 1974 Act, which makes clear that the information powers in the 1974 Act, as amended by the 2006 Act, do not override legal professional privilege.