

**EXPLANATORY MEMORANDUM TO**  
**THE CONSUMER CREDIT APPEALS TRIBUNAL RULES 2008**

**2008 No. 668**

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 This statutory instrument, the Consumer Credit Appeals Tribunal Rules 2008 (the “Rules”), puts into place the practice and procedures for proceedings before the Consumer Credit Appeals Tribunal (the “Tribunal”). Under the Rules, an “appeal” is an appeal to the Tribunal under section 41(1) of the Consumer Credit Act 1974 (the “1974 Act”) or under regulation 44(20)(c) of the Money Laundering Regulations 2007; or, where the context requires, an appeal from the Tribunal to the Court of Appeal or the Court of Session.
3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Background**
  - 4.1 The Consumer Credit Act 2006 (the “Act”) amends and updates the 1974 Act. Section 55 of the Act (which inserts a new section 40A into the 1974 Act) contains provision to the effect that an independent tribunal, under the auspices of the Ministry of Justice will hear consumer credit licensing appeals arising from decisions of the Office of Fair Trading (OFT). These decisions include, in particular, decisions to refuse to issue, renew or vary a licence as requested, to revoke a licence or concern the imposition of a civil penalty or an additional requirement.
  - 4.2 Section 56 of the Act (which inserts new subsections into section 41 of the 1974 Act) provides that the hearing of an appeal before the Tribunal will be a re-hearing of the determination appealed against. Schedule 1 to the Act inserts a new Schedule A1 into the 1974 Act which makes provision about the Tribunal and proceedings before it. Paragraph 12 of that Schedule allows the Tribunal to:
    - Confirm the OFT’s determination;
    - Quash the determination;
    - Vary the determination except that, where the appeal is against imposition of a penalty for breach of licence requirements, the Tribunal will not be able to increase the penalty;

- Remit the matter to the OFT for reconsideration in accordance with any directions given to it by the Tribunal; and
  - Give the OFT directions for the purpose of giving effect to its decision.
- 4.3 There is a transitional procedure in paragraph 27 of Schedule 3 to the Act that sets out that appeals against determinations of the OFT, made before the commencement of the CCAT, will continue to be appealed to the Secretary of State (heard by the existing consumer credit appeals panel who make a recommendation to the Secretary of State) until ultimately disposed of. All new appeals will go to the Tribunal.

#### Money Laundering Regulations 2007

- 4.4 The Money Laundering Regulations 2007 implement the EC Third Money Laundering Directive in the UK. One of the requirements of the Directive is that all sectors covered by the Regulations be supervised for their compliance with them. The Office of Fair Trading (OFT) in partnership with local authority trading standards services, perform this function for consumer credit financial institutions and estate agents. This supervision includes the power to impose penalties and therefore an appeals process was needed. The regulations came into effect on the 15 December 2007 and replaced the 2003 regulations.

#### 5. **Extent**

- 5.1 This instrument applies to England, Wales, Scotland and Northern Ireland.

#### 6. **European Convention on Human Rights**

- 6.1 As the Rules are subject to the negative resolution procedure, and do not amend primary legislation, no statement is required.

#### 7. **Policy Background**

- 7.1 The licensing of credit business is governed by the 1974 Act. The 1974 Act provides that the OFT is the licensing authority for consumer credit and requires that those wishing to conduct regulated business be licensed by the OFT. The OFT only grants a licence where it considers the applicant to be a fit person to hold a consumer credit licence. The OFT also has the power to suspend or revoke a licence.
- 7.2 The 1974 Act provides that appeals against licensing decisions by the OFT fall to the Secretary of State, who, in practice, appoints suitably qualified independent persons to hear such appeals on his behalf. In spite of this arrangement, concerns were expressed that the absence of a transparently independent appeals mechanism for licensing determinations may be contrary to the principles of the Human Rights Act 1998.
- 7.3 To address these concerns and to formalise the independence of the appeals process, the Act (which amends and updates the 1974 Act) contains provision

to the effect that an independent tribunal under the auspices of the Ministry for Justice will hear consumer credit licensing appeals.

### Consultation

- 7.4 A 12-week public consultation exercise ran between 5 November 2007 and 28 January 2008. A consultation document was distributed to a wide range of interested parties, stakeholders and those with the relevant knowledge to comment on the proposals. A total of seven responses were received to this consultation and the Rules were broadly welcomed. Where appropriate the Rules have been amended to address issues raised in the responses.
- 7.5 A brief outline of the main issues raised in consultation, including an explanation of subsequent amendments to the Rules, follows:
- Some consultees were concerned that under the draft Rules a request to extend the notice of appeal period, from 28 days, could only be brought out of time, ie. after the period had ended. Rule 15 now allows the appellant to make an application both during and after the 28 day period, as appropriate to the type of appeal in question. This is also the case for the Regulator's (OFT's) statement of case (rule 16).
  - In consultation, the OFT suggested that the appellant should be obliged to set out why he thought his appeal should be allowed rather than why the Regulator's decision was wrong. The OFT felt this would help the appellant focus on setting out his grounds of appeal rather than concentrating on the substantive issue of the Regulator's decision. We have incorporated this suggestion in rule 15(4)(e) as we feel it could help the appellant to focus on the merits of his own case rather than the potential weaknesses of the OFT's case. We have used the word 'granted' as a lay person may interpret 'allowed' as meaning they should set out why the appeal should proceed.
  - In consultation, the OFT suggested that it was not an appropriate burden for the Regulator to have to file a statement of case in support of its decision; but that instead it should file a statement as to whether the appeal should be allowed or refused. Rule 16 has been redrafted to reflect this because we agree that the OFT should not be obliged to defend its decision. The new rule also makes clear that the OFT can choose whether or not to take an active part in the proceedings.
  - In consultation the OFT were concerned that a draft rule on secondary disclosure could place a significant administrative burden on them. The rule required the Regulator to submit any further material that may assist the appellant's case to the Tribunal. They also felt that the rule was inappropriate as the OFT would not usually have any documents in their possession other than those on which it based its decision. To reflect this concern we have removed this rule. Under rule 16 the Regulator need only provide those documents he relies on in support of his case. If the Tribunal or appellant

wanted any further information the rule on disclosure of documents, rule 5, could be relied on.

- The Bar Council were concerned that the Rules "provide for a system of disclosure which appears, potentially, to be more extensive than the existing regime. The principal concern is that the Rules may be considered to provide a case for compelling disclosure from the appellant in circumstances where there is no current compulsion, nor any indication in the enabling legislation that this was intended". To reflect this concern we have removed this rule and revised the rule about disclosure, rule 5, to allow the Tribunal to direct that fuller information be disclosed if necessary in the circumstances.

## **8. Impact**

- 8.1 An initial assessment was completed and did not indicate that the proposals were likely to lead to additional costs or savings for business, charities or the voluntary sector. Therefore, an additional Impact Assessment was not prepared.

## **9. Contact**

- 9.1 Howard Ripley at the Ministry of Justice (telephone: 020 7340 6569; email [howard.ripley@tribunals.gsi.gov.uk](mailto:howard.ripley@tribunals.gsi.gov.uk)) can answer questions on the instrument.