
STATUTORY INSTRUMENTS

1998 No. 1203

CONSUMER CREDIT

The Consumer Credit Licensing (Appeals) Regulations 1998

Made - - - - *10th May 1998*
Laid before Parliament *12th May 1998*
Coming into force - - *1st October 1998*

The Secretary of State, in exercise of her powers under sections 41(1) and (2), 147(1), 150, 182(2) and (4) and 189(1) of the Consumer Credit Act 1974(1), and of all other powers enabling her in that behalf, hereby makes the following Regulations:—

PART I
INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the Consumer Credit Licensing (Appeals) Regulations 1998 and shall come into force on 1st October 1998.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“the Act” means the Consumer Credit Act 1974;

“appeal” means appeal to the Secretary of State under section 41 of the Act, and “the appeal” shall be construed accordingly;

“appellant” means a person making, or proposing to make, an appeal from a determination, being a person mentioned in the second column of the table set out at the end of section 41(2) of the Act in relation to such a determination;

“appointed person” means a person appointed by the Secretary of State in accordance with the provisions of regulation 24;

(1) 1974 c. 39. Section 189(1) is cited for the meaning given to “prescribed” and “regulations”.

(2) Section 150 of the Act provides that section 41 (as applied by section 147(1)) is to have effect as if the entry specified in section 150 were included in the table set out at the end of section 41.

“business premises” means premises for occupation for the purposes of a consumer credit, consumer hire or ancillary credit business or for any of those and other purposes;

“determination” means a determination by the Director mentioned in the first column of the table set out at the end of section 41 of the Act;

“document” includes information recorded in writing or in any other form;

“notice of a determination”, in the case of a determination to which section 34 of the Act applies, means notice given in accordance with the provisions of subsection (3) of that section or, in the case of a determination which is a refusal to give directions in respect of the appellant under section 29(5) or 32(5) of the Act (Director’s power to give directions authorising the licensee to carry into effect agreements made by him before the expiry, revocation or suspension of a licence), means a notice setting out the determination given in accordance with the provisions of article 6 of the Consumer Credit Licensing (Representations) Order 1976(3);

“party”, in relation to an appeal, means any party to the appeal, including the Director;

“report” means the report of an appointed person prepared in accordance with regulation 21;

“Scottish proceedings” means proceedings in relation to an appeal where the appellant had, at the time of the determination, their principal business premises in Scotland;

and other expressions used in these Regulations have the same respective meanings as in the Act.

PART II

MAKING AN APPEAL

Time for and manner of making an appeal

3.—(1) An appellant aggrieved by a determination must, if he wishes to appeal against it, appeal by sending a notice of appeal to the Secretary of State so that it is received not later than the end of the period of twenty-eight days beginning with the date on which notice of the determination is given.

(2) The Secretary of State may extend the time limit imposed by paragraph (1), but must not do so unless she is satisfied—

- (a) that the circumstances are such that it would not be reasonable to expect the appellant to comply with the time limit, and
- (b) that not to extend the time limit could result in substantial injustice.

(3) Where the appellant considers that the period of twenty-eight days referred to in paragraph (1) is likely to expire, or where it has expired, before he is or was able to give his notice of appeal, he must, if he wishes the Secretary of State to extend the time limit imposed by paragraph(1), send to the Secretary of State a statement of the reasons on which he relies to justify the delay in giving notice and the Secretary of State must consider any such statement in deciding whether or not to extend the time limit.

Notice of appeal

4.—(1) The Director, on giving notice of a determination, must at the same time send to the person to whom it is addressed a form which may be used for making an appeal, but an appeal need not be made using such a form.

(2) The notice of appeal must state the name and address of the appellant and must contain sufficient information to identify the determination by which he is aggrieved.

- (3) The notice of appeal must—
 - (a) set out the grounds of appeal in sufficient detail to indicate—
 - (i) the particulars of any matter referred to in the Director’s determination which the appellant disputes, together with the reasons why he disputes it;
 - (ii) the particulars of any other matter upon which the appellant relies for the purpose of his appeal against the Director’s determination; and
 - (b) indicate the name and address and the profession or occupation of the person (if any) representing the appellant, and whether the Secretary of State should send documents concerning the appeal to the representative instead of to the appellant.
- (4) The appellant or his representative must sign the notice of appeal.

Additional material

5.—(1) Within a period of twenty-one days beginning with the date on which he receives a copy of the notice of appeal from the Secretary of State the Director must send the material required by paragraphs (2) and (3) (the “additional material”) to the Secretary of State.

- (2) The Director must send to the Secretary of State—
 - (a) a copy of the determination by which the appellant is aggrieved, and
 - (b) a copy of every other document on which the Director intends to rely for the purposes of opposing the appeal, including any document in which he sets out for the first time the particulars of any fact or reason for opposing the appeal, additional to those reasons that are detailed in the determination.
- (3) Where the Secretary of State is satisfied that it would not be reasonable to expect the Director to send any document, or documents of any description, within the time limit mentioned in paragraph (1), she may extend the time limit in relation to that document or documents of that description.

Amendment of grounds of appeal and of additional material

6.—(1) The appellant may, with the leave of the Secretary of State, at any time before he receives notice under regulation 12(2) (of the time and place of the oral hearing), add to or amend the grounds of appeal and the Director may, with the leave of the Secretary of State, at any time before he receives such notice, add to or amend the additional material sent to the Secretary of State in accordance, in the case of the grounds, with regulation 4 or, in the case of the additional material, with regulation 5(2) (b).

(2) An appellant seeking leave of the Secretary of State to add to or amend his grounds of appeal or the Director seeking leave to add to or amend additional material under paragraph (1) must send a copy of every amendment and any document necessary to explain or to support that amendment or addition to the Secretary of State.

- (3) The Secretary of State must not grant leave under paragraph (1) unless—
 - (a) she is satisfied that the amendment of, or addition to, the grounds or the new or amended additional material is capable of significantly affecting the outcome of the appeal; and
 - (b) she has afforded the appellant or the Director, as appropriate, an opportunity to make representations to her in writing on the proposed amendment, or addition, or on the new or amended additional material.
- (4) Where the Secretary of State grants leave under paragraph (1) she may do so on such terms as she thinks fit.

Withdrawal of appeal

7.—(1) The appellant may at any time withdraw his appeal by notice to the Secretary of State.

(2) Where an appeal is withdrawn, a fresh appeal may not be brought in relation to the disputed determination.

Withdrawal of opposition to appeal

8. Where the Director at any time gives notice to the Secretary of State in writing that he does not seek to oppose an appeal, the Secretary of State may give notice to the Director, that she proposes under section 41(3) of the Act to give the directions the appellant seeks in relation to the appeal.

PART III

RESPONSE TO THE APPEAL

Acknowledgement and notification

9. On receiving the notice of appeal and the additional material the Secretary of State must in each case without delay—

- (a) send an acknowledgement of its receipt to the appellant or the Director, as appropriate, and
- (b) send a copy of it to the appellant or the Director, as appropriate.

Clarification of appellant's grounds or Director's additional material

10.—(1) Where notice of an appeal or additional material has been received by the Secretary of State and she considers that the appeal could be decided more fairly and efficiently if the appellant provided clarification of his grounds or if the Director provided further additional material, the Secretary of State may serve on the appellant or the Director, as appropriate, a notice to that effect, inviting the relevant party to provide that clarification or to supply that material to the Secretary of State within twenty-one days of the date of the notice.

(2) Where the Secretary of State serves a notice under paragraph (1) on either the appellant or the Director, she must at the same time inform the other party to the appeal that she has done so and must without delay send to the appellant or the Director, as appropriate, a copy of any document she receives under this regulation.

PART IV

THE HEARING

Appointment of Expert

11.—(1) The Secretary of State may, if she thinks that any technical or other matter, including a matter of law, arises in relation to the appeal on which it would be desirable for the appointed person to have the assistance of any person having specialist knowledge in relation to that matter, appoint a person having appropriate qualifications to enquire into and report on the matter and, if either party or the appointed person requests, to attend the hearing and give evidence.

(2) The Secretary of State must supply the Director, the appellant and the appointed person with a copy of any report received under paragraph (1) in advance of the hearing.

(3) The Secretary of State shall pay such reasonable fees as she may determine to any person appointed under this regulation.

Fixing the date for the hearing

12.—(1) When the Secretary of State has received the notice of appeal and the additional material she must, bearing in mind the seriousness and complexity of the case and the convenience of the parties, without delay fix a date and place for the hearing.

(2) The Secretary of State must serve on the parties a notice informing them of the time and place of the hearing of the appeal.

(3) The date fixed for the hearing must be no less than twenty-one days and no more than six weeks after the date of the notice under paragraph (2).

(4) The notice must include guidance regarding the procedure which will apply to the hearing, including, in particular, information about—

- (a) attending the hearing and bringing documents and evidence,
- (b) the right of the parties to call witnesses,
- (c) the right to be represented or assisted at the hearing,
- (d) the right to receive the report of the appointed person,
- (e) the right to receive in writing the Secretary of State’s reasons for the directions given by her under section 41(3) for the disposal of the appeal,
- (f) the right to appeal from the Secretary of State’s directions,
- (g) the public nature of the hearing.

Action to be taken by the parties on receiving notice of the hearing

13. No less than fourteen days before the date fixed for the hearing, the appellant and the Director must each inform the Secretary of State whether or not he intends to attend the hearing, whom he intends to be represented by, if anyone, and which, if any, witnesses he or his representative intends to call and whether, and on what grounds, he requests that the hearing should not be held in public.

Alteration of place or time of the hearing

14.—(1) The Secretary of State may alter the time and place of the hearing—

- (a) where both the appellant and the Director agree, or
- (b) in exceptional circumstances, without the agreement of the parties, provided that the altered date of the hearing is not earlier than the original date.

(2) Where the Secretary of State alters the time or place of the hearing under paragraph (1)(b) above, she must without delay inform the appellant and the Director in writing of the alteration and the reasons for it.

Publication of notice of the hearing

15. The Secretary of State must, in such manner as she thinks fit, publish a notice of the time and place fixed for any hearing to which the public are to have access under regulation 16 below.

Hearing to be in public

16.—(1) The hearing must be in public except where the Secretary of State is satisfied that, either because the subject matter to be considered by the appointed person relates to intimate personal

or financial circumstances, is commercially sensitive, or consists of information communicated or obtained in confidence, or for any other reason, it is fair and reasonable for the hearing, or any part of the hearing, to be conducted in private.

(2) Whether or not the hearing is held in public, a member of the Council on Tribunals or its Scottish Committee is entitled to attend the hearing and may remain present during the deliberations of the appointed persons but must not take part in the hearing or in those deliberations.

Procedure at the hearing

17.—(1) At the beginning of the hearing the appointed person or, if more than one has been appointed, the appointed person who is to preside—

- (a) must explain the order of proceedings which he proposes to adopt,
- (b) must conduct the hearing in the manner which he considers most suitable to the clarification and resolution of the issues in dispute before him and to the fair handling of the proceedings, and
- (c) shall, so far as appears appropriate, seek to avoid formality in the proceedings.

(2) The appellant and the Director may appear at the hearing and may be represented or assisted by any person.

(3) If the appellant or the Director fails to attend or be represented at the hearing, the appointed person may hear the other party or his representative and proceed to prepare his report in accordance with regulation 21.

(4) Subject to paragraph (5), the appellant and the Director are entitled to give evidence, to call witnesses, to question any witnesses and to address the appointed person both on the evidence and generally on the subject matter of the appeal.

(5) The appointed person or, if more than one has been appointed, the appointed person who is to preside, may at any point in the hearing—

- (a) limit the rights of either party under paragraph (4), provided that he is satisfied that to do so will not prevent the appeal from being decided fairly; and
- (b) adjourn the hearing, but must not do so unless he is satisfied that it is necessary to do so in order for the appeal to be decided fairly.

General powers of appointed person

18. Subject to the provisions of these Regulations, an appointed person may regulate the procedure of any oral hearing of an appeal as he thinks fit.

Absence of appointed person

19. Where more than one person has been appointed to hear an appeal, the persons appointed may, in the event of the absence of any other appointed persons, if they think fit, hear, or continue to hear, the appeal.

Evidence at the hearing

20.—(1) Evidence before the appointed person may be given orally or, if he permits, by affidavit or written statement.

(2) The appointed person may receive evidence of any fact which appears to him to be relevant, whether or not the evidence—

- (a) would be admissible in a court of law, or

- (b) was available to the Director when the determination was made.

PART V

DETERMINATION OF THE APPEAL BY THE SECRETARY OF STATE

Appointed person's report

21.—(1) Where the appointed person has completed the hearing of oral representations for which Part IV of these Regulations provide, he shall provide for the Secretary of State a reasoned report of the hearing which shall—

- (a) take into account any representations made and evidence produced in the course of the appeal;
- (b) include any findings of fact or rulings on points of law relevant to his recommendation;
- (c) include his recommendations as to the determination of the appeal by the Secretary of State and as to the payment of costs; and
- (d) be signed by the appointed person and, if more than one person has been appointed and has heard the appeal, by any such person, provided that if any appointed person does not agree with any of the recommendations contained in the report he shall indicate that he does not agree, giving his reasons.

Notice of directions for disposing of the appeal

22.—(1) The Secretary of State shall consider the report and shall, as soon as practicable thereafter, give notice to the parties of her directions for disposing of the appeal under section 41(3) of the Act.

(2) The notice given under paragraph (1) shall, in addition to the directions described in that paragraph, contain a statement—

- (a) setting out any specific directions which the Secretary of State gives by virtue of section 2(2) of the Act as to the particulars of the appeal which the Director is to cause to be kept in the register;
- (b) setting out the Secretary of State's reasons for her directions under section 41(3) of the Act; and
- (c) declaring that any person who is dissatisfied in point of law with the decision of the Secretary of State and who had a right to appeal to the Secretary of State from the Director's determination (whether or not he has exercised that right) may, by virtue of section 11 of the Tribunals and Inquiries Act 1992, apply to Her Majesty's High Court of Justice or to the Court of Session, or to the High Court of Justice in Northern Ireland.

(3) In any case where the Secretary of State gives directions under section 41(3) of the Act, she shall give to the appellant a copy of any report relating to the appeal which was given to the Secretary of State by the appointed person.

Publication

23.—(1) The Secretary of State must make such arrangements for the publication of her decision as she considers appropriate, but in doing so must have regard to the confidentiality of any evidence heard in private or of any confidential material supplied to her.

(2) For the purpose of any arrangements made under paragraph (1), the Secretary of State may make any deletions which appear to her to be necessary from the text of any document.

PART VI

SUPPLEMENTARY AND REPEAL

Appointment of persons to hear appeals on behalf of the Secretary of State

24.—(1) There shall be a panel of persons, for England and Wales, for Scotland and for Northern Ireland, respectively, appointed by the Secretary of State to hear appeals on her behalf.

(2) Appointments shall be made to the panel for England and Wales, for Scotland and for Northern Ireland of persons who shall be—

- (a) in the case of England and Wales, persons having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(4), in the case of Scotland, solicitors or advocates of at least seven years standing, and in the case of Northern Ireland, persons having a seven year general qualification within the meaning of section 9 of the Magistrates Courts Act (Northern Ireland) 1964(5), or
- (b) persons whom the Secretary of State considers, by reason of their experience or otherwise, to have special knowledge of matters likely to be relevant to appeals under the Act, or
- (c) persons whom the Secretary of State considers representative of the interests of persons in relation to whom the Director has power to make the determinations referred to in section 41 of the Act.

(3) A person appointed to a panel—

- (a) must be appointed (or re-appointed) for a period not exceeding five years, but
- (b) may be removed from office by the Secretary of State on the grounds of incapacity or misbehaviour;

and subject to that shall hold and vacate office in accordance with the terms of his appointment.

(4) On receiving notice of appeal under regulation 3 the Secretary of State must without delay appoint one or more panel members to hear the appeal and, where she appoints more than one, she shall determine who shall preside.

(5) The appointed person shall be appointed—

- (a) from the panel of persons appointed for England and Wales if the appellant's business premises are in England or Wales or, in the case of an appellant who does not have a licence, they would have been, if his application for a licence had been granted;
- (b) from the panel of persons appointed for Scotland if the appellant's business premises are in Scotland or, in the case of an appellant who does not have a licence, they would have been, if his application for a licence had been granted;
- (c) from the panel of persons appointed for Northern Ireland if the appellant's business premises are in Northern Ireland, or in the case of an appellant who does not have a licence, they would have been, if his application for a licence had been granted.

(6) The Secretary of State may determine the fees and expenses to be paid to the appointed person.

Irregularities

25.—(1) Any irregularity resulting from failure to comply with any provision of these Regulations before the Secretary of State has reached her decision shall not of itself render the proceedings void.

(4) 1990 c. 41.

(5) 1964 c. 21 (N.I.).

(2) Where any such irregularity comes to the attention of the Secretary of State, she may, and must if she considers any person may have been prejudiced by the irregularity, give such directions as she thinks just, before reaching her decision, to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction, or a decision of the Secretary of State or in an appointed person's report, or errors arising in such a document from an accidental slip or omission, may be corrected by the Secretary of State, but, in the case of a report, only with the permission of the appointed person who prepared it.

Time

26. Where the time prescribed by these Regulations for doing any act expires on a Sunday or public holiday, the act is in time if done on the next following day which is not a Sunday or public holiday.

Revocation

27. Subject to regulation 28, the Consumer Credit Licensing (Appeals) Regulations 1976(6) are hereby revoked.

Transitional provisions

28. Where, before the date on which these Regulations come into force, an appeal has been made in respect of which the Secretary of State has given no directions for its disposal, the Consumer Credit Licensing (Appeals) Regulations 1976 shall continue to apply to that appeal until the Secretary of State has given notice to the parties of her directions for disposing of the appeal under section 41(3) of the Act.

10th May 1998

Nigel Griffiths
Parliamentary Under-Secretary of State for
Competition and Consumer Affairs,
Department of Trade and Industry

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the period within which and the manner in which appeals may be made under section 41 of the Consumer Credit Act 1974. This section provides for the making of appeals to the Secretary of State from certain determinations of the Director General of Fair Trading in relation to the licensing of consumer credit, consumer hire and ancillary credit business. The Regulations also make provision as to the persons by whom such appeals may be heard, the manner in which they are to be conducted and other matters connected with such appeals. They repeal the Consumer Credit Licensing (Appeals) Regulations 1976 (S.I.1976/837) under which appeals under the 1974 Act have hitherto been conducted, subject to transitional provisions for appeals made before these Regulations come into force.

Although these Regulations are made under the 1974 Act, they are modelled on model appeals procedure rules prescribed by the Deregulation (Model Appeals Provisions) Order 1996 (S.I. 1996/1678) made under the Deregulation and Contracting Out Act 1994. The principal differences between these Regulations and the model rules result from the fact that, whereas the model provides for a tribunal that can itself determine appeals, the 1974 Act, in section 41, confers the power to determine appeals only on the Secretary of State.

Among the most significant divergences in procedure between the procedure for which the 1976 Regulations provided and that for which these Regulations provide are those relating to publicity—e.g. the publication of the hearing date (regulation 15), for the hearing to be held in public (regulation 16) and for the Secretary of State to make such arrangements as she considers appropriate for giving publicity to her decision (regulation 23)—and the elimination of provision for appeals to be determined by written representations, rather than after an oral hearing. One similarity is the provision these Regulations make (regulation 24(4)) for one, or for more than one, person to hear appeals on the Secretary of State's behalf.

A Regulatory Appraisal of the costs and benefits that will result from these Regulations will be available in the Libraries of the Houses of Parliament when the Regulations, having been made, are laid before Parliament and from the Consumer Credit Appeals Secretariat, the Department of Trade and Industry, Room 235, 10 Victoria Street, London SW1H 0NN.