

1976 No. 837

CONSUMER CREDIT

The Consumer Credit Licensing (Appeals) Regulations 1976

| | |
|-------------------------------|-------------------------|
| <i>Made - - - -</i> | <i>27th May 1976</i> |
| <i>Laid before Parliament</i> | <i>7th June 1976</i> |
| <i>Coming into Operation</i> | <i>[28th June 1976</i> |

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation, commencement and interpretation.

COMMENCEMENT OF APPEAL

2. Notice of appeal.
3. Notice of grounds of appeal.
4. Director's reply.
5. Appellant's rejoinder.
6. Amendment of grounds before directions for hearing.
7. Director's reply to amendment.

DISPOSAL OF APPEAL WITHOUT HEARING

8. Director's consent to allowing of appeal.
9. Contested appeal without hearing.

DISPOSAL OF APPEAL WITH HEARING

10. Directions for hearing.
11. Amendment of grounds at hearing.
12. Notice of hearing.
13. Admission of members of Council on Tribunals, etc.
14. Procedure at hearing.
15. Appellant's failure to appear at hearing.
16. Appointed person's report.
17. Dismissal of appeal after appellant's failure to appear.

GENERAL PROVISIONS

18. Notice of directions disposing of appeal.
19. Appointment of appointed person.
20. Evidence.
21. Disclosure of documents.
22. Protection of confidentiality, etc. of documents.

23. Abandonment of appeal.
24. Effect of non-compliance with these regulations.
25. Extensions of time.
26. Power of Secretary of State to give procedural directions.

Schedule 1. Notice of appeal.

Schedule 2. Notice of grounds of appeal.

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

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Consumer Credit Licensing (Appeals) Regulations 1976 and shall come into operation on 28th June 1976.

(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 column 2 of the table set out at the end of section 41 of the Act in relation to such a determination;

“appointed person” means a person appointed by the Secretary of State in relation to an appeal in accordance with the provisions of regulation 19;

“determination” means a determination by the Director mentioned in column 1 of the table set out at the end of section 41 of the Act;

“the Director’s reply” means a notice given under regulation 4(c) together with any document given therewith;

“notice of appeal” means a notice given under regulation 2(1);

“notice of grounds” means a notice given under regulation 3(1);

“notice of amendment” means a notice given under regulation 6(3);

“notice of the determination”, in the case of a determination to which section 34 of the Act applies, means notice thereof 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(b);

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

“period for appeal” means the period mentioned in paragraph (1) or (3) of regulation 2 below, as the case may require;

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

(3) The Interpretation Act 1889(c) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

(a) 1974 c. 39.
(c) 1889 c. 63.

(b) S.I. 1976/191 (1976 I, p. 486).

COMMENCEMENT OF APPEAL

Notice of appeal

2.—(1) Subject to paragraph (3) below, an appellant who is aggrieved by a determination may appeal by giving to the Secretary of State within the period of 28 days beginning with the date on which notice of the determination is given (“period for appeal”) a notice (“notice of appeal”); and a notice of appeal shall comply with the requirements of Schedule 1 to these regulations.

(2) In the case of a notice of appeal which—

(a) is given to the Secretary of State within the period for appeal; and

(b) appears to him to comply with the requirements of Schedule 1;

the Secretary of State shall—

(i) inform the appellant of its receipt; and

(ii) send a copy of it to the Director.

(3) In a case where notice of the determination is given before these regulations come into operation an appellant may give notice of appeal under paragraph (1) above within the period beginning with the date on which notice of the determination is given and ending 28 days after these regulations come into operation (“period for appeal”).

Notice of grounds of appeal

3.—(1) An appellant shall at or after the time when he gives notice of appeal to the Secretary of State (but not later than the end of the period for appeal) give to the Secretary of State notice of the grounds of appeal (“notice of grounds”) and a notice of grounds shall comply with the requirements of Schedule 2 to these regulations.

(2) In the case of a notice of grounds which—

(a) is given to the Secretary of State at a time which satisfies paragraph (1) above; and

(b) appears to him to comply with the requirements of Schedule 2;

the Secretary of State shall—

(i) inform the appellant of its receipt; and

(ii) send a copy of it to the Director.

Director's reply

4. The Director shall, within the period of 14 days beginning with the date on which the notice of grounds is given to him, give to the Secretary of State—

(a) a copy of any document constituting the appellant's application to the Director to which the determination by which the appellant is aggrieved relates and of any document containing information in support of that application;

(b) a copy of—

(i) any notice of the determination given by the Director to the appellant; and

(ii) any general notice of it given by the Director; and

(c) notice setting out any representations which the Director wishes to make together with a copy of any document which he wishes to produce (“the Director's reply”).

*Appellant's rejoinder***5.** The Secretary of State shall—

- (a) give a copy of the Director's reply to the appellant with a notice inviting him to give to the Secretary of State, within a period of 14 days beginning with the date on which the notice is given to him, notice setting out any further representations he wishes to make and a copy of any document he wishes to produce; and
- (b) give a copy of any notice or other document received under paragraph (a) above to the Director.

*Amendment of grounds before directions for hearing***6.—**(1) The Secretary of State shall amend the notice of grounds where—

- (a) the appellant has given to the Secretary of State at a time when he is permitted to do so under paragraph (2) below a notice setting out the proposed amendment; and
 - (b) it appears to the Secretary of State that the amendment should be made.
- (2) An appellant may give notice to the Secretary of State under paragraph (1)(a) above at any time before he gives notice to the parties under regulation 9(4) below that a hearing of oral representations is not necessary, or directions under regulation 10(1) below for oral representations to be heard by an appointed person.
- (3) When the Secretary of State makes an amendment of a notice of grounds under this regulation he shall give notice of that fact setting out the amendment ("notice of amendment") to the appellant and to the Director.
- (4) Where an appellant has given notice to the Secretary of State under paragraph (1)(a) above and it does not appear to the Secretary of State that the amendment should be made he shall give the appellant notice of that fact, giving his reasons.

Director's reply to amendment

7.—(1) The Director shall within the period of 7 days beginning with the date on which a notice of amendment is given to him give to the Secretary of State notice setting out any representations he wishes to make thereon together with a copy of any further document which he wishes to produce.

(2) The Secretary of State shall—

- (a) give a copy of any notice or document given under paragraph (1) above to the appellant with a notice inviting him to give to the Secretary of State, within a period of 7 days beginning with the date on which the notice is given to him, notice setting out any further representations he wishes to make and a copy of any further document he wishes to produce; and
- (b) give a copy of any notice or other document received under subparagraph (a) above to the Director.

DISPOSAL OF APPEAL WITHOUT HEARING

Director's consent to allowing of appeal

8.—(1) The Secretary of State, after taking into account any notice and any document received under regulations 2 to 7 above, or 21 below, may at any time give notice to the Director that he proposes under section 41(3) of the

Act to give the directions which the appellant seeks unless the Director objects by notice given to the Secretary of State within a period of 14 days beginning with the date on which that notice is given.

- (2) If, pursuant to a notice under paragraph (1) above, the Director—
- (a) does not so object, or informs the Secretary of State that he will not so object, within that period, the Secretary of State shall give those directions; or
 - (b) does so object within that period, the Secretary of State shall give notice to the appellant in accordance with the provisions of regulation 9(1) below.

Contested appeal without hearing

9.—(1) In a case where regulation 8(2)(a) above does not have effect the Secretary of State shall give notice to the appellant that he will give directions for oral representations to be heard unless, within a period of 14 days beginning with the date on which that notice is given, the appellant gives notice to him that the appellant prefers the appeal to be heard without oral representations.

(2) Where the appellant has given notice pursuant to paragraph (1) above the Secretary of State may give notice to any party—

- (a) specifying any question which appears to him to be material; and
- (b) inviting that party to give to him, within a period of 7 days beginning with the date on which that notice is given, notice setting out any representations which he wishes to make thereon;

and where a notice is given to the Secretary of State under sub-paragraph (b) above he shall—

- (i) send a copy of it to the other party; and
- (ii) by notice invite that party to give to him, within a period of 7 days beginning with the date on which that notice is given, notice setting out any representations he wishes to make thereon.

(3) Where the appellant has given notice pursuant to paragraph (1) above and it appears to the Secretary of State that it is not necessary for oral representations to be heard the Secretary of State shall give notice to the Director—

- (a) informing him of that fact; and
- (b) inviting him, within a period of 7 days beginning with the date on which that notice is given, to give to the Secretary of State notice setting out any representations he wishes to make about the necessity of oral representations being heard.

(4) Where the appellant has given notice pursuant to paragraph (1) above and it appears to the Secretary of State after taking account of any notice given to him under this regulation that it is not necessary for oral representations to be heard, the Secretary of State shall give notice to the parties—

- (a) that a hearing of oral representations is not necessary; and
- (b) that the Secretary of State is proceeding to—
 - (i) refer the appeal to an appointed person for consideration and report without a hearing of oral representations; or
 - (ii) give directions under section 41(3) of the Act for disposing of the appeal;

and the Secretary of State shall so refer the appeal or give those directions.

DISPOSAL OF APPEAL WITH HEARING

Directions for hearing

10.—(1) Where the Secretary of State so directs, oral representations shall be heard

- (a) by an appointed person; or
- (b) by an officer of the Secretary of State;

and the Secretary of State shall give notice of any such direction to the parties.

(2) A direction shall not be given under paragraph (1)(b) above unless the Secretary of State has afforded the parties an opportunity of making representations to him thereon.

(3) Where the Secretary of State directs that oral representations are to be heard by an officer of his, references in regulations 6(2) above and 11, 14, 15, 16, 17, 19, 21 and 22 below to the appointed person shall be construed as references to that officer.

Amendment of grounds at hearing

11.—(1) An appellant may amend a notice of grounds in the course of the hearing of oral representations if the appointed person gives leave for the amendment which is proposed to be made.

(2) The appointed person shall not give such leave unless he has informed the Director that he is minded to do so and afforded to him an opportunity of making representations on the proposed amendment.

Notice of hearing

12. In any case other than a case where the appeal is—

- (a) disposed of under regulation 8(2)(a) above or 9(4)(b)(ii) above; or
- (b) referred to an appointed person under regulation 9(4)(b)(i) above;

the Secretary of State shall, after taking into account any notice, statement and other document which has been sent to the Secretary of State under the foregoing provisions of these Regulations and not less than 21 days before the date on which oral representations are to be heard, give notice to the parties of the date, time and place of the hearing.

Admission of members of Council on Tribunals, etc.

13. A member of the Council on Tribunals or of the Scottish Committee of the Council shall be permitted to attend the hearing of oral representations in his capacity as such a member.

Procedure at hearing

14.—(1) The appointed person shall give such directions at the hearing of oral representations as appear to him to be appropriate for the proper conduct thereof.

(2) Without prejudice to the generality of paragraph (1) above the appointed person shall—

- (a) permit any person authorised by any party to do so (“representative”) to conduct that party’s case on his behalf;
- (b) afford to the parties or their representatives an opportunity to make an opening and a closing statement;

- (c) if he adjourns the hearing, inform the parties a reasonable time before its resumption of the date, time and place of that resumption;
- (d) permit each party or his representative to call witnesses;
- (e) address any questions which appear to him to be appropriate to each party and to any witness; and
- (f) permit any questions which appear to him to be appropriate to be addressed by each party or his representative to any party who is present and to any witness.

Appellant's failure to appear at hearing

15. Where the appellant or his representative does not appear at the date, time and place of the hearing the appointed person may—

- (a) adjourn the hearing; or
- (b) if there appears to him to be good reason to do so—
 - (i) proceed to hear the Director, or his representative, if he appears; or
 - (ii) proceed forthwith to prepare his report in accordance with regulation 16 below.

Appointed person's report

16.—(1) Where the appeal is referred to the appointed person under regulation 9(4)(b)(i) above or the appointed person has completed the hearing of oral representations under regulations 10 to 15 above, he shall take into account any representations made and evidence produced in the course of the appeal and give to the Secretary of State a reasoned report in writing thereon.

(2) Where the appointed person has proceeded under regulation 15(b) above he shall expressly state that he has done so in his report.

Dismissal of appeal after appellant's failure to appear

17.—(1) Where it appears from the report of the appointed person that he has proceeded under regulation 15(b) above the Secretary of State may (subject to paragraphs (2) and (3) below) give directions dismissing the appeal.

(2) Where it so appears from that report and the Secretary of State is minded to give directions dismissing the appeal (whether or not by virtue of paragraph (1) above) the Secretary of State shall (unless it appears that an appointed person has proceeded under regulation 15(b) above on more than one occasion), not less than 7 days before he gives such directions, give notice to the appellant of the fact that he is so minded.

(3) In a notice given under paragraph (2) above the Secretary of State shall inform the appellant that he will give directions dismissing the appeal unless the appellant satisfies him within a period of 7 days beginning with the date on which the notice is given that there was sufficient reason for the failure to appear; but where the appellant so satisfies the Secretary of State, the Secretary of State shall give such directions as appear to him to be appropriate for a further hearing of oral representations and these regulations shall apply accordingly.

GENERAL PROVISIONS

Notice of directions disposing of appeal

18.—(1) The Secretary of State shall give notice to the parties of his directions for disposing of the appeal under section 41(3) of the Act and that notice shall

in addition 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 his 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 42 of the Act 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.

(2) In any case where the directions which the Secretary of State gives under section 41(3) of the Act are not those which the appellant stated that he wished the Secretary of State to give in the notice of grounds, or in that notice as amended under regulations 6 and 11 above as the case may be, the Secretary of State shall give to the appellant a copy of any report relating to the appeal which was given to the Secretary of State under regulation 16(1) above.

Appointment of appointed person

19.—(1) The Secretary of State may appoint to hear an appeal on his behalf any person ("appointed person") who appears to him by reason of his knowledge or experience to be qualified to do so; and where he appoints more than one such person in relation to an appeal he may determine which of them is to preside.

(2) The Secretary of State may appoint any person to give the appointed person advice on matters of law or on any other matter relating to the appeal.

Evidence

20. For the avoidance of doubt it is hereby declared that evidence may be admitted in an appeal whether or not it would be admissible in a court of law.

Disclosure of documents

21.—(1) The Secretary of State at any time, or the appointed person during the hearing of oral representations by him, may invite any party to supply to him any document or copy thereof which appears to him to be material to the appeal.

(2) Where any document is supplied by a party under paragraph (1) above—

- (a) to the Secretary of State, he shall send a copy thereof to any other party; or
- (b) to the appointed person, he shall afford to any other party an opportunity to examine it or shall otherwise make known its contents to that party.

Protection of confidentiality, etc. of documents

22. In any case where under these regulations he is required to make known in any way the contents of any document to any party, the Secretary of State or the appointed person, as the case may be, may, so far as that is practicable, exclude from any copy of any document or from information about its contents any matter which relates to the private affairs of a person who is not a party

and the publication of which would or might in the opinion of the Secretary of State or of the appointed person prejudicially affect the interests of that person.

Abandonment of appeal

23.—(1) The appellant may at any time by notice to the Secretary of State abandon the appeal.

(2) The Secretary of State shall send a copy of any notice given under paragraph (1) to the Director.

Effect of non-compliance with these regulations

24. Where, by reason of anything done or left undone there has been a failure in any respect to comply with the requirements of these regulations, other than those of regulation 2(1) or (3) above, the failure shall not terminate the appeal unless the Secretary of State so directs; but where there has been such a failure he may give such directions dealing with the proceedings generally as he thinks fit.

Extensions of time

25. At any time the Secretary of State may extend the period, other than the period for giving notice of appeal under regulation 2(1) or (3) above, within which a person is required or authorised by these regulations to do anything and these regulations shall have effect accordingly.

Power of Secretary of State to give procedural directions

26. Subject to the provisions of the Act and of these regulations, the procedure to be followed in the course of an appeal except in the course of the hearing of oral representations shall be such as the Secretary of State directs.

John Fraser,
Minister of State,

27th May 1976.

Department of Prices and Consumer Protection.

*(Regulation 2)*SCHEDULE 1
NOTICE OF APPEAL

Every notice of appeal shall—

- (1) identify the appellant and give his business address and his address for service of documents (if different);
- (2) identify the determination by which the appellant is aggrieved; and
- (3) be signed by or on behalf of the appellant.

*(Regulation 3)*SCHEDULE 2
NOTICE OF GROUNDS OF APPEAL

Every notice of grounds of appeal shall—

- (1) if it is not given to the Secretary of State together with the notice of appeal to which it relates, identify that notice;
 - (2) contain a concise statement of the grounds of appeal—
 - (a) indicating—
 - (i) any reason; and
 - (ii) any finding of fact relied on by the Director in the notice of the determination which the appellant disputes;
 - (b) giving particulars of any reason or fact upon which the appellant relies in relation to the matters disputed under sub-paragraph (a) above;
 - (c) giving particulars of any other reason or fact upon which the appellant relies; and
 - (d) indicating any point on which he relies under sub-paragraphs (b) and (c) above which appears to him to be a point of law;
 - (3) state the nature of the directions which the appellant wishes the Secretary of State to give under section 41(3) of the Act; and
 - (4) be signed by or on behalf of the appellant.
-

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, which provides for the bringing of appeals to the Secretary of State from certain determinations of the Director General of Fair Trading—referred to as “the Director” in the regulations—in relation to the licensing of consumer credit, consumer hire and ancillary credit businesses. 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.

SI 1976/837
ISBN 0-11-060837-2



780110 608372