Draft Order laid before Parliament under section 49(5) of the Tribunals, Courts and Enforcement Act 2007, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2009 No. 0000

TRIBUNALS AND INQUIRIES

The Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009

Made - - - -	***
Coming into force - -	*1st September 2009*

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 30(1) and (4), 31(1), (2) and (9) and 38 of, and paragraph 30 of Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(**a**).

A draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 49(5) of that Act.

Citation and commencement

1. This Order may be cited as the Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009 and comes into force on 1st September 2009.

Transfer of functions and abolition of tribunal

2.—(1) The functions of the Consumer Credit Appeals Tribunal are transferred to the First-tier Tribunal.

(2) The Consumer Credit Appeals Tribunal is abolished.

Transfer of persons into the First-tier Tribunal and the Upper Tribunal

3. A person who, immediately before this Order comes into force, holds an office listed in column (1) of the following table is to hold the office or offices listed in the corresponding entry in column (2) of the table.

(**a**) 2007 c. 15.

(1) Office held	*(2) Office to be held*
President of the Consumer Credit Appeals Tribunal appointed under paragraph 2(1) of Schedule A1 to the Consumer Credit Act 1974(**a**)	Transferred-in judge of the First-tier Tribunal and deputy judge of the Upper Tribunal
Deputy President of the Consumer Credit Appeals Tribunal appointed under paragraph 2(3) of Schedule A1 to the Consumer Credit Act 1974	Transferred-in judge of the First-tier Tribunal
Member of the panel of chairmen of the Consumer Credit Appeals Tribunal appointed under paragraph 3(1) of Schedule A1 to the Consumer Credit Tribunal 1974	Transferred-in judge of the First-tier Tribunal
Other member of the Consumer Credit Appeals Tribunal appointed under paragraph 3(3) of Schedule A1 to the Consumer Credit Act 1974	Transferred-in other member of the First-tier Tribunal

Consequential and transitional provisions

4.—(1) Schedule 1 contains amendments to primary legislation as a consequence of the transfer effected by this Order.

(2) Schedule 2 contains amendments to secondary legislation as a consequence of the transfer effected by this Order.

(3) Schedule 3 contains repeals and revocations as a consequence of the amendments in Schedules 1 and 2.

(4) Schedule 4 contains transitional and saving provisions.

By authority of the Lord Chancellor

Parliamentary Under-Secretary of State
Ministry of Justice

Date

(**a**) 1974 c. 39. Schedule A1 was inserted by section 55(2) of, and Schedule 1 to, the Consumer Credit Act 2006 (c.14) and amended by paragraph 11 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c.15).

SCHEDULE 1

Article 4(1)

Consequential amendments to primary legislation

Consumer Credit Act 1974

1. The Consumer Credit Act 1974(**a**) is amended as follows.

2. In section 2(7) (powers of Secretary of State) for "Tribunal" substitute "First-tier Tribunal".

3. Omit section 40A (the Consumer Credit Appeals Tribunal).

4. In section 41 (appeals to the Secretary of State under Part 3)—

(a) in the heading for "Secretary of State" substitute "First-tier Tribunal";

(b) in subsection (1) for "Tribunal" substitute "First-tier Tribunal"; and

(c) omit subsections (1A) to (1D).

5. After section 41 insert—

"**Tribunal Procedure Rules: suspension of OFT determinations**

41ZA. In the case of appeals to the First-tier Tribunal under section 41, Tribunal Procedure Rules may make provision for the suspension of determinations of the OFT.

Disposal of appeals

41ZB.—(1) The First-tier Tribunal shall decide an appeal under section 41 by way of a rehearing of the determination appealed against.

(2) In disposing of an appeal under section 41 the First-tier Tribunal may do one or more of the following—

(a) confirm the determination appealed against;

(b) quash that determination;

(c) vary that determination;

(d) remit the matter to the OFT for reconsideration and determination in accordance with the directions (if any) given to it by the tribunal;

(e) give the OFT directions for the purpose of giving effect to its decision.

(3) In the case of an appeal under section 41 against a determination to impose a penalty, the First-tier Tribunal—

(a) has no power by virtue of subsection (2)(c) to increase the penalty;

(b) may extend the period within which the penalty is to be paid (including in cases where that period has already ended).

(4) Subsection (3) does not affect—

(a) the tribunal's power to give directions to the OFT under subsection (2)(d); or

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(**a**) 1974 c. 39. Section 2(7) was amended by section 58(1) of the Consumer Credit Act 2006 (c.14). Sections 40A, 41(1A) to (1D), 41A and 182(1A) were inserted by sections 55, 56(2), 57 and 58(2) of the 2006 Act respectively and section 41(1) was amended by section 56(1) of that Act. Section 182(2) was amended by section 58(3) of the 2006 Act. In section 189(1) the definition of "the Tribunal" was inserted by, and the definition of "appeal period" was amended by, section 58(4) of the 2006 Act and subsection (1A) was inserted by section 27(3) of the 2006 Act. Schedule A1 was inserted by section 55(2) of, and Schedule 1 to, the 2006 Act and amended by paragraph 11 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c.15).

(b) what the OFT can do where a matter is remitted to it under subsection (2)(d).

(5) Where the First-tier Tribunal remits a matter to the OFT, it may direct that the requirements of section 34 of this Act are not to apply, or are only to apply to a specified extent, in relation to the OFT's reconsideration of the matter.

(6) Subject to subsections (7) and (8), where the First-tier Tribunal remits an application to the OFT, section 6(1) and (3) to (9) of this Act shall apply as if the application had not been previously determined by the OFT.

(7) In the case of a general notice which came into effect after the determination appealed against was made but before the application was remitted, the applicant shall provide any information or document which he is required to provide under section 6(6) within—

(a) the period of 28 days beginning with the day on which the application was remitted; or

(b) such longer period as the OFT may allow.

(8) In the case of—

(a) any information or document which was superseded,

(b) any change in circumstances which occurred, or

(c) any error or omission of which the applicant became aware,

after the determination appealed against was made but before the application was remitted, any notification that is required to be given by the applicant under section 6(7) shall be given within the period of 28 days beginning with the day on which the application was remitted.".

6. Omit section 41A (appeals from the Consumer Credit Appeals Tribunal).

7. In section 182 (regulations and orders)—

(a) omit subsection (1A); and

(b) in subsection (2)—

(i) omit "or rules" wherever occurring;

(ii) omit "or by the Lord Chancellor"; and

(iii) in paragraph (c), for "person making them" substitute "Secretary of State".

8. In section 189 (definitions)—

(a) in subsection (1)—

(i) in the definition of "appeal period" for "Tribunal" substitute "First-tier Tribunal"; and

(ii) omit the definition of "the Tribunal"; and

(b) in subsection (1A) omit "and paragraphs 14 and 15 of Schedule A1".

9. Omit Schedule A1 (the Consumer Credit Appeals Tribunal).

Tribunals and Inquiries Act 1992

10. In Part 1 of Schedule 1 to the Tribunals and Inquiries Act 1992(**a**) (tribunals under direct supervision of the Council on Tribunals) omit the entry at paragraph 9B relating to consumer credit.

(**a**) 1992 c. 53. The entry in relation to the Consumer Credit Appeals Tribunal was inserted by section 58(5) of the Consumer Credit Act 2006 (c.14).

Counter-Terrorism Act 2008

11. In paragraph 28 of part 6 of Schedule 7 to the Counter-Terrorism Act 2008(**a**) (appeal against imposition of civil penalty)—

(a) omit sub-paragraph (6)(c); and

(b) in sub-paragraph (7) for ", (b) or (c)" substitute "or (b)".

(**a**) 2008 c. 28. As amended by paragraph 4 of the Schedule to the Revenue and Customs Appeals Order 2009 (S.I. 2009/777)

SCHEDULE 2

Article 4(2)

Consequential amendments to secondary legislation

Money Laundering Regulations 2007

1. In regulation 44 (appeals) of the Money Laundering Regulations 2007(**a**)—

(a) in paragraph (2)(c) for "Consumer Credit Appeals Tribunal" substitute "First-tier Tribunal"; and

(b) omit paragraph (5).

Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007

2. In article 2 (list of tribunals) of the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007(**b**) omit the entry relating to the Consumer Credit Appeals Tribunal.

(**a**) S.I. 2007/2157.
(**b**) S.I. 2007/2951.

SCHEDULE 3

Article 4(3)

Repeals and revocations

Act or instrument repealed/revoked	*Reference*	*Extent of repeal/ revocation*
Consumer Credit Act 2006	2006 c. 14	Sections 55, 56(2), 57 and 58 and Schedule 1
Tribunals, Courts and Enforcement Act 2007	2007 c. 15	Paragraph 11 of Schedule 10
Consumer Credit Appeals Tribunal Rules 2008	S.I. 2008/668	The whole of the Rules

SCHEDULE 4

Article 4(4)

Transitional and saving provisions

Transitional and saving provisions

1. Any proceedings before the Consumer Credit Appeals Tribunal which are pending immediately before 1st September 2009 shall continue on and after 1st September 2009 as proceedings before the First-tier Tribunal.

2.—(1) The following sub-paragraphs apply where proceedings are continued in the First-tier Tribunal by virtue of paragraph 1.

(2) Where a hearing began before 1st September 2009 but was not completed by that date, the First-tier Tribunal must be comprised for the continuation of that hearing of the person or persons who began it.

(3) The First-tier Tribunal may give any direction to ensure that proceedings are dealt with fairly and, in particular, may—

(a) apply any provision in procedural rules which applied to the proceedings before 1st September 2009; or

(b) disapply provisions of Tribunal Procedure Rules.

(4) In sub-paragraph (3) "procedural rules" means provision (whether called rules or not) regulating practice or procedure before a tribunal.

(5) Any direction or order given or made in proceedings which is in force immediately before 1st September 2009 remains in force on and after that date as if it were a direction or order of the First-tier Tribunal.

(6) A time period which has started to run before 1st September 2009 and which has not expired shall continue to apply.

(7) An order for costs may only be made if, and to the extent that, an order could have been made before 1st September 2009.

3. Where an appeal lies to a court from any decision made by the Consumer Credit Appeals Tribunal before 1st September 2009, that right of appeal has not been exercised, and the time to exercise that right of appeal has not expired prior to 1st September 2009, section 11 of the Tribunals, Courts and Enforcement Act 2007(**a**) (right to appeal to Upper Tribunal) shall apply as if the decision were a decision made on or after 1st September 2009 by the First-tier Tribunal, and any reference to the Consumer Credit Appeals Tribunal in an enactment relating to such an appeal, express or otherwise, is to be taken as a reference to the First-tier Tribunal.

4. Any case to be remitted by a court on or after 1st September 2009 and which, if it had been remitted before 1st September 2009, would have been remitted to the Consumer Credit Appeals Tribunal, shall be remitted to the First-tier Tribunal.

5. Staff appointed to the Consumer Credit Appeals Tribunal before 1st September 2009 are to be treated on and after that date, for the purpose of any enactment, as if they had been appointed by the Lord Chancellor under section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (tribunal staff and services).

6. A decision made by the Consumer Credit Appeals Tribunal before 1st September 2009 is to be treated as a decision of the First-tier Tribunal on or after 1st September 2009.

(**a**) 2007 c. 15.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"). Part 1 of the 2007 Act creates a new two tier tribunal structure; the First-tier Tribunal and the Upper Tribunal are established under section 3 of the 2007 Act. Order making powers are provided under Part 1 of the 2007 Act to enable the functions of existing tribunals to be transferred into the new structure. This Order transfers the functions of the Consumer Credit Appeals Tribunal to the First-tier Tribunal.

Transfer of functions of tribunals

Article 2 transfers the functions of the Consumer Credit Appeals Tribunal to the First-tier Tribunal and abolishes the Consumer Credit Appeals Tribunal.

Transfer of members of tribunals

Article 3 provides for members of the Consumer Credit Appeals Tribunal to hold the offices of deputy judge of the Upper Tribunal, transferred-in judge of the First-tier Tribunal or transferred-in other member of the First-tier Tribunal.

Consequential provisions

Article 4(1) to (3) brings Schedules 1 to 3 into effect. Schedules 1 and 2 contain consequential amendments to legislation in consequence of the transfer of the functions of the Consumer Credit Appeals Tribunal to the First-tier Tribunal. Schedule 3 contains consequential repeals and revocations of legislation in consequence of the amendments in Schedule 1 and 2.

Transitional and saving provisions

Article 4(4) brings Schedule 4 into effect. Schedule 4 makes transitional and saving provisions for the treatment of cases, which would previously have been dealt with by the Consumer Credit Appeals Tribunal, following the coming into force of this Order.

The Schedule provides for proceedings which have been started in the Consumer Credit Appeals Tribunal to be transferred to the First-tier Tribunal; new proceedings will be started in the First-tier Tribunal. In transferred cases the following provisions apply:

—a hearing which has already been commenced but not completed will need to be completed in the First-tier Tribunal but comprised of the same members;

—directions and orders made prior to this Order coming into force will continue in force as if they were directions or orders of the First-tier Tribunal;

—the First-tier Tribunal will be able to disapply Tribunal Procedure Rules, or apply the Consumer Credit Appeals Tribunal Rules 2008 as they applied to the Consumer Credit Appeals Tribunal, to ensure that proceedings are dealt with fairly;

—time limits which begin to run before this Order comes into force continue to apply after the Order comes into force; and

—the First-tier Tribunal will only be able to make a costs order if and to the extent that the Consumer Credit Appeals Tribunal could have made such an order.

Appeals against the decisions of the Consumer Credit Appeals Tribunal, if the appeal right has not been exercised before this Order comes into force and the time for doing so has not expired, are to be treated as appeals against the decisions of the First-tier Tribunal.

A Regulatory Impact Assessment was prepared for the Tribunals, Courts and Enforcement Act 2007. This can be found at:

http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm

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