



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

Lught-Reill Shirveishyn Argidoil Ellan Vannin

**Consultation Paper
Financial Services Tribunal (Amendment) Rules**

CP21-06

Issue Date: 28 May 2021

Closing Date: 9 July 2021

Consultation Paper – CP21-06

This Consultation Paper is issued by the Isle of Man Financial Services Authority in association with the Isle of Man Government Treasury.

The purpose of the consultation is to obtain views on a proposed change to the Financial Services Tribunal Rules 2015 (**‘the FST Rules’**). The consultation is particularly relevant to persons that may appeal against decisions of the Isle of Man Financial Services Authority under the FST Rules.

The closing date for comments is **9 July 2021**.

Please send comments in writing and preferably by email to:

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Confidentiality and Data Protection

The information you send may be published in full or in a summary of responses. All information in responses, including personal data, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2018). If you want your response to remain confidential, you should explain why confidentiality is necessary. Your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding. The Authority is registered with the Information Commissioner as a data controller under Isle of Man data protection legislation. It collects and processes personal data to carry out its functions under relevant legislation and may share personal data with other parties where there is a legal basis for doing so. Further information on how the Authority collects and processes personal data can be found in the Privacy Policy on the Authority’s website: <https://www.iomfsa.im/terms-conditions/privacy-policy/>.

If you have a query in relation to how this consultation has been carried out, please contact the Authority’s Policy and Authorisations Division by email at Policy@iomfsa.im or by telephone on +44 (0) 1624 646000.

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Glossary

Authority	Isle of Man Financial Services Authority
FSA08	Financial Services Act 2008 ¹
FST Rules	Financial Services Tribunal Rules 2015 ²
IoM	Isle of Man

¹ https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2008/2008-0008/FinancialServicesAct2008_15.pdf

² <https://www.iomfsa.im/media/2458/fstrules-keelingschedule-2018.pdf>

1. Executive Summary

1.1 Overview

The *Financial Services Tribunals Rules 2015* ('FST Rules') provide for appeals against some decisions of the Authority. The FST Rules operate in conjunction with the Authority's regulatory and oversight legislation, and replaced the *Financial Services Review Regulations 2001* ('2001 Regulations').

The FST Rules are used infrequently, but it has come to our notice that the FST Rules omit a provision specifying the grounds of any appeal. Therefore, the proposed *Financial Services Tribunal (Amendment) Rules* will add such a provision, based on wording in the 2001 Regulations.

1.2 What is the purpose of this Consultation Paper?

The consultation paper seeks views on the proposed insertion of the grounds of appeal provision into the FST Rules.

1.3 Who may be affected by this Consultation Paper?

The amendment could affect any party that seeks to appeal against a decision of the Authority, but only by clarifying meaning.

2. Consultation Process

2.1 The Authority's regulatory objectives

The Authority's regulatory objectives are set out in section 2(2) of the FSA08 as —

- (a) securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) the maintenance of confidence in the Island's financial services, insurance and pensions industries through effective regulation, thereby supporting the Island's economy and its development as an international financial centre.

The Authority is required to give consideration to certain factors when discharging its functions in accordance with paragraph 3 of Schedule 1 to the FSA08. The most relevant factors for this consultation are considered as follows:

Factor	Information
The need for the regulatory, supervisory and registration regimes to be effective, responsive to commercial developments and proportionate to the benefits which are	The proposed amendment clarifies the ability for someone to make an appeal about a decision of the Authority. Such a

Factor	Information
expected to result from the imposition of any regulatory burden	decision could be about a burden that has been imposed.
The need to promote public understanding of the financial services, insurance and pensions industries	Inserting the grounds of appeal into the FST Rules will improve clarity of the legislation and assist users to understand whether they are able to appeal.

2.2 Responding to the Consultation Paper

Open dialogue with stakeholders is an essential element for successful development of the Authority's proposals and constructive feedback will help the Authority reach an informed decision on the content of the proposals and manner of implementation. Respondents should note the following when responding to this Consultation Paper:

- As responses to the consultation may be subject to publication or disclosure in accordance with access to information regimes, respondents should state if they wish their response to remain confidential and, if so, the reasons for this.
- Submissions received by the closing date of the consultation will be considered but may not necessarily result in a change to the proposals following a review of all responses received.
- Professional bodies, trade associations and other representative groups should provide a summary of the people and organisations they represent when responding to a consultation as well as the methodology used to gain members' input.
- The Authority requests that submissions are not made anonymously as they will not be considered or included in the Consultation Response.

This Consultation Paper has been published on the Authority's website and the Isle of Man Government's Consultation Hub³. It has also been notified to the Island's Deemsters, as required by section 8(1) of the *Tribunals Act 2006*⁴.

3. Proposals

3.1 Background

The *Financial Services Tribunals Rules 2015* ('FST Rules')⁵ provide for appeals against some decisions of the Authority. The FST Rules are made under the *Tribunals Act 2006* and operate in conjunction with the Authority's regulatory and oversight legislation⁶.

³ <https://consult.gov.im/>

⁴ https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2006/2006-0001/TribunalsAct2006_11.pdf

⁵ <https://www.iomfsa.im/media/2458/fstrules-keelingschedule-2018.pdf>

⁶ Beneficial Ownership Act 2017, Collective Investment Schemes Act 2008, Designated Businesses (Registration and Oversight) Act 2015, Financial Services Act 2008, Insurance Act 2008, Retirement Benefits Schemes Act 2000 - see <https://legislation.gov.im/cms/legislation/current/by-title.html>

The regulatory and oversight legislation specifies certain matters that may be referred to a tribunal and that the tribunal may confirm, vary or revoke the Authority's decision. The FST Rules describe the process for appeals.

The FST Rules were drawn up by Cabinet Office and Attorney General's Chambers in association with the Financial Supervision Commission⁷ and replaced the *Financial Services Review Regulations 2001*⁸.

3.2 Proposal

The proposed *Financial Services Tribunal (Amendment) Rules* add a new rule (6A) to the FST Rules which links to current rule 6(3).

Rule 6 says:

6 Starting an appeal

- (1) An appeal is made to the Tribunal by the appellant delivering to the Clerk a notice of appeal in writing ...
- (3) The notice must include all the following information –
 - (a) the appellant's name and address;
 - (b) details of the original decision; and
 - (c) the grounds of the appeal (including, where appropriate, a brief summary of the facts giving rise to it)

However, despite referring to them in rule 6(3)(c) above, the grounds of appeal are not mentioned elsewhere in the FST Rules. Therefore, they are being inserted by means of a draft new rule.

Draft new rule 6A says:

6A Grounds of appeal

- The grounds of an appeal, which must be included in the notice in rule 6(3), are that -
- (a) the disputed decision is based on an error of fact; or
 - (b) the disputed decision is wrong in law.

The proposed insertion is taken from regulation 24 in the (now revoked) 2001 Regulations which said:

- 24(1)** The Committee must decide, taking into account in particular the applicant's grounds of review and the Reply of the regulatory authority whether –
- (a) the disputed decision is based on an error of fact;
 - (b) the disputed decision is wrong in law...

Unlike the 2001 Regulations, the FST Rules are not structured so as to direct the FST Tribunal in its decisions and actions, so the style of wording is different.

⁷ The Financial Supervision Commission (FSC) was one of the IoM's financial services regulators before the Authority was established in 2015.

⁸ <https://www.tynwald.org.im/links/tls/SD/2001/2001-SD-0332.PDF>

4. Impact Assessment

It is not believed that the proposed *Financial Services Tribunal (Amendment) Rules* will have any adverse impact on any party, whether individual or business, regulated entity or adviser, because they merely serve to clarify meaning. It is likely that the new rule 6A will enable a quicker and more efficient appeals process.

5. Question

Do you have any comments on the draft *Financial Services Tribunal (Amendment) Rules*? If so, please tell us your views and the reasons.

6. Next Steps

Following closure of the consultation period, the Authority will review the responses received and publish a Consultation Response document on the Authority's website and the Isle of Man Government's Consultation Hub.

Subject to any views received, it is proposed that the *Financial Services Tribunal (Amendment) Rules* will progress through Tynwald and come into operation later in 2021.

Appendix – Draft legislation

FINANCIAL SERVICES TRIBUNAL (AMENDMENT) RULES 2021

Approved by Tynwald:

Coming into Operation:

xxx 2021

The Council of Ministers, after consulting the Deemsters, makes the following Rules under section 8 and 12(3) of the Tribunals Act 2006.

1 Title

These Rules are the Financial Services Tribunal (Amendment) Rules 2021.

2 Commencement

If approved by Tynwald, these Rules come into operation on xxx 2021.

3 Financial Services Tribunal Rules 2015 amended

- (1) The Financial Services Tribunal Rules 2015 are amended as follows.
- (2) After rule 6, insert a new rule 6A —

6A Grounds of appeal

The grounds of an appeal, which must be included in the notice in rule 6(3), are that —

- (a) the disputed decision is based on an error of fact; or
- (b) the disputed decision is wrong in law. **6A**.

MADE _____ 2021

W GREENHOW
Chief Secretary

EXPLANATORY NOTE *(This note is not part of the Rules)*

These Rules amend the Financial Services Tribunal Rules 2015 by adding the grounds for an appeal.