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STATUTORY INSTRUMENTS

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**2008 No. 1730**

**The Network Access Appeal Rules 2008**

**PART 4**

Hearing of appeals

**Withdrawal of appeal and unopposed appeals**

**22.**—(1) The appellant may withdraw the appeal at any time by filing a notice in writing to that effect and the adjudicator must dismiss the appeal.

(2) The registrar may withdraw the registrar's opposition to the appeal at any time by filing a notice in writing to that effect and the adjudicator must allow the appeal.

**Requirement notice**

**23.**—(1) The adjudicator may, at any stage of the proceedings, require the attendance of any person to give evidence or to produce any relevant documents.

(2) A requirement by the adjudicator under paragraph (1) may be made on the adjudicator's own initiative or at the request of a party.

(3) A requirement notice must—

- (a) be in writing;
- (b) identify the person who is intended to comply with the requirement;
- (c) identify the matter to which the requirement notice relates;
- (d) state the nature of the requirement being imposed by the adjudicator;
- (e) specify the time and place at which the adjudicator requires the person to attend (if appropriate); and
- (f) specify whether the adjudicator requires the person to produce any documents and if so, how and when those documents are to be produced.

(4) The party on whose behalf the adjudicator states that it is being issued must serve the requirement notice.

(5) Unless the person on whom the requirement notice is served agrees to shorter notice, a requirement notice must be served not less than 7 working days before that person is required to appear before the adjudicator.

(6) At the time of service of a requirement notice, any person that it is served on who is not a party to the proceedings, must be offered a sum by the party on whose behalf the requirement notice is being served, to cover any expenses necessarily incurred by travelling to and from the place specified in that requirement notice.

(7) Where a requirement notice has been served on a person, that person may apply to the adjudicator for the requirement notice to be varied or set aside.

(8) The adjudicator must not vary or set aside a requirement notice without first giving any person who requested the requirement notice an opportunity to oppose the application under paragraph (7).

### **Notification of witnesses**

**24.**—(1) If a party intends to call a witness, including an expert witness that the adjudicator has allowed a party to call in accordance with rule 28(1)(b), that party must, not less than 14 days before the day fixed for the hearing of the appeal (unless the adjudicator directs otherwise) file—

- (a) a written notice stating the name of the witness; and
- (b) a statement of the evidence the witness will give, verified by a statement of truth.

(2) At the same time as filing the documents under this rule, each party must serve a copy on each other party.

### **Fixing the time and place of the hearing of the appeal**

**25.** Unless the parties agree to shorter notice or the adjudicator considers that it is necessary in the interests of justice to expedite the matter, the adjudicator must give the parties not less than 28 days notice of the time and place of the hearing of the appeal.

### **Determination without hearing**

**26.** The adjudicator may determine an appeal, or any particular issue, without a hearing if—

- (a) the parties agree in writing; or
- (b) the issue concerns only a request for directions.

### **Public hearings and directions for private hearings**

**27.**—(1) In this rule, “hearing” means any hearing under these Rules except for a directions hearing that takes place without notice to any other party to consider a request under rule 18(3).

(2) In accordance with section 109 of the 2002 Act, the adjudicator may direct that all or part of a hearing is to be in private.

(3) Before giving a direction under paragraph (2) that all of a hearing is to be in private, the adjudicator must consider whether it is only necessary that part of the hearing be in private.

(4) The adjudicator may permit any individual to attend a hearing which is to be held in private.

(5) The adjudicator may exclude from the whole or part of any hearing any individual whose conduct, in the opinion of the adjudicator, has disrupted or is likely to disrupt the hearing.

(6) Subject to any direction under paragraph (7), the adjudicator must allow for the public inspection of—

- (a) a daily list of all hearings; and
- (b) information about the time and place fixed for the hearings.

(7) Where it is decided that all or part of a hearing is to be held in private, the adjudicator may direct that information about the whole or the relevant part of the proceedings before the adjudicator (including information that might help to identify any person) must not be made public.

### **Evidence**

**28.**—(1) Subject to rule 24 (notification of witnesses) and to any directions by the adjudicator, a party may—

- (a) give evidence;

- (b) with the permission of the adjudicator under rule 5 (directions), bring expert evidence;
- (c) call witnesses;
- (d) question any witnesses; and
- (e) address the adjudicator on the evidence, and generally on the subject matter of the appeal.

(2) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce at the trial of an action in a court of law in England and Wales.

(3) The adjudicator may require any person to give evidence on oath or affirmation.

(4) Evidence may be admitted by the adjudicator whether or not it—

- (a) would be admissible in a civil trial in England and Wales; or
- (b) was available to the registrar when the registrar's decision was made.

### **Failure to attend a hearing**

**29.**—(1) If a party who is due to attend any hearing fails to attend or be represented, the adjudicator may, if satisfied that there is no sufficient reason for the absence—

- (a) hear and determine the appeal in the party's absence; or
- (b) (i) adjourn the hearing; and  
(ii) give such directions as the adjudicator considers necessary.

(2) Where a party can subsequently show sufficient reason for not attending or being represented at a hearing at which the adjudicator proceeded in the party's absence, that party may request the adjudicator's permission to have the hearing re-opened.

### **Publication of adjudicator's decision**

**30.**—(1) Except to the extent that paragraph (2) applies, the adjudicator—

- (a) must make arrangements to publish the adjudicator's final decision; and
- (b) may make arrangements to publish any other decision made by the adjudicator.

(2) If the adjudicator decides that a restriction on publication is necessary, the adjudicator may take any steps, including any one or more of the steps specified in paragraph (3) with a view to ensuring the minimum restriction on publication that is consistent with the need for the restriction.

(3) The steps referred to in paragraph (2) are—

- (a) anonymising the decision;
- (b) editing the text of the decision; and
- (c) declining to publish the whole or part of the decision.

(4) Before reaching a decision under paragraph (1) on whether to impose restrictions on publication the adjudicator must invite the parties to make representations.

### **Notification of adjudicator's decision**

**31.**—(1) The adjudicator must as soon as practicable—

- (a) whether there has been a hearing or not, serve on each party a notification of the final decision and the reasons for it;
- (b) subject to any steps taken under these Rules to restrict publication, enter the final decision and the reasons for reaching it in the register; and

- (c) except where the parties are present or represented at a hearing when the decision is given, serve on each party a notification of any other decision made by the adjudicator in the appeal and, where appropriate, the reasons for it.
- (2) Every notification under paragraph (1) must be accompanied by a notification of—
  - (a) the right of appeal from a decision of the adjudicator to the High Court under section 111 of the 2002 Act; and
  - (b) the time within which, and the place at which, an application for permission to appeal may be made.

### **Costs**

**32.**—(1) The adjudicator may on the application of a party or on the adjudicator’s own initiative make an order as to costs.

(2) In deciding what order (if any) as to costs to make the adjudicator must have regard to all of the circumstances including—

- (a) the conduct of the parties during the proceedings;
- (b) whether a party has succeeded on the whole or part of their case; and
- (c) specifically in relation to the registrar, whether the registrar’s decision which is the subject matter of the appeal is irrational.

(3) The adjudicator may make a costs order against a legally qualified representative of a party if the adjudicator considers that a party has incurred costs of the proceedings unnecessarily as a result of negligence or delay by the legally qualified representative.

(4) The adjudicator may only make a costs order under paragraph (3) if the adjudicator considers that it is just in all of the circumstances for the legally qualified representative to compensate a party who has incurred the whole or part of those costs.

(5) No costs order may be made under this rule without first giving the paying party (including a legally qualified representative who is ordered to pay costs under this rule) an opportunity to make representations against the making of an order.

(6) Rule 42(4) to (13) of the Adjudicator to Her Majesty’s Land Registry (Practice and Procedure) Rules 2003(1) apply when an order as to costs is made under paragraph (1).