
STATUTORY INSTRUMENTS

2008 No. 1730

The Network Access Appeal Rules 2008

PART 2

General powers of the adjudicator

Power of adjudicator to regulate proceedings

3. Subject to the provisions of the 2002 Act and these Rules, the adjudicator may regulate the procedure to be followed when an appeal is made.

Case management conferences

4.—(1) The adjudicator may, for the purpose of managing the proceedings, direct the parties to attend a case management conference.

(2) The adjudicator must give the parties not less than 14 days notice of the time and place of a case management conference under paragraph (1) unless—

- (a) the parties agree to shorter notice; or
- (b) the adjudicator considers that it is necessary in the interests of justice to expedite the matter.

Directions

5.—(1) The adjudicator may at any time give directions including (but not limited to) directions provided for in these Rules to—

- (a) enable the parties to prepare for the hearing of the appeal;
- (b) assist the adjudicator to determine the issues; and
- (c) ensure the just, expeditious and economical determination of the appeal.

(2) The adjudicator may give directions—

- (a) at the request of any party; or
- (b) on the adjudicator's own initiative.

(3) Where the adjudicator gives a direction on the adjudicator's own initiative under paragraph (2)

(b) the adjudicator may (but need not) give prior notice to the parties of his intention to do so.

(4) Any request for directions must—

- (a) include the reasons for making that request; and
- (b) be filed, except where it is made during the course of a hearing.

(5) The party making the request for directions must at the same time notify each other party of the request except where the request—

- (a) is accompanied by the written consent of each other party;
- (b) is made during a hearing; or

- (c) concerns an application to withhold the disclosure of documents under rule 18(3).
- (6) Where the adjudicator directs that a hearing is to be held to consider a request under this rule, the adjudicator must give the parties not less than 14 days notice of the hearing—
 - (a) unless the parties consent to shorter notice; or
 - (b) the adjudicator considers it is necessary in the interests of justice to expedite the matter.
- (7) Directions may be given in writing or orally at a hearing.
- (8) Where a direction is given under these Rules, that direction—
 - (a) may include a statement of the possible consequences of a party's failure to comply with the direction; and
 - (b) may specify a time limit for complying with the direction.
- (9) The adjudicator may make a direction varying or setting aside a direction given under these Rules—
 - (a) at the adjudicator's own initiative;
 - (b) at the request of a party; or
 - (c) at the request of a witness affected by that direction.
- (10) The adjudicator must not give a direction to vary or set aside a direction under paragraph (9) without first giving any party who requested the direction an opportunity to oppose such a direction.

Related appeals

6. The adjudicator may direct that two or more appeals, or any particular issue raised in the appeals, be heard together.

Preliminary questions

- 7.—(1) The adjudicator may direct that any preliminary question of fact or law, which appears to be in issue in relation to the appeal, be determined at a preliminary hearing.
- (2) As soon as is practicable after a determination is made under paragraph (1), the adjudicator must notify the parties of that determination and the reasons for it in writing.
- (3) If, in the opinion of the adjudicator, the determination of that preliminary question substantially determines the appeal, the adjudicator may—
 - (a) treat the preliminary hearing as the hearing of the appeal; and
 - (b) make such order by way of disposing of the appeal as the adjudicator thinks fit.
- (4) If the parties agree in writing, the adjudicator may determine the preliminary question without a hearing.
- (5) Where the adjudicator determines the preliminary question in accordance with paragraph (4), the adjudicator must not at the same time determine the appeal unless the parties have agreed in writing that the adjudicator may do so.

Representation at hearings

- 8.—(1) Subject to paragraph (2), the parties may appear at a hearing and may be assisted or represented by any person, whether or not that person is a legally qualified representative.
- (2) If the adjudicator is satisfied that there are good reasons for doing so, the adjudicator may refuse to permit a person to assist or represent a party at a hearing.

Adjournment of hearing

- 9.**—(1) Where a party requests an adjournment of a hearing that party must—
- (a) notify all other parties of the request for an adjournment;
 - (b) show good reason why an adjournment is necessary; and
 - (c) where appropriate produce evidence of any fact or matter relied upon in support of the request for an adjournment.
- (2) The adjudicator may adjourn a hearing on such terms (if any) as the adjudicator thinks fit.
- (3) Where the hearing is adjourned, the adjudicator must fix a new hearing date to take place as soon as is reasonably practicable after the original hearing date.

Powers of adjudicator to strike out

- 10.**—(1) The adjudicator may direct that the whole or part of any appeal notice or response be struck out at any stage of the proceedings on the ground that it—
- (a) discloses no reasonable grounds for bringing or defending an appeal;
 - (b) is an abuse of the appeal process; or
 - (c) is likely to obstruct the just determination of the proceedings.
- (2) Before making an order under paragraph (1), the adjudicator must provide an opportunity for the party against whom it is proposed that the order should be made, to make representations against the making of the order.

Failure to comply

- 11.**—(1) The adjudicator may take such steps as the adjudicator considers appropriate in the circumstances in respect of a party where that party has, without reasonable excuse, failed to comply—
- (a) with a direction given under these Rules; or
 - (b) with a provision of these Rules.
- (2) The adjudicator must not take any steps under this rule in respect of a party unless the adjudicator has given that party an opportunity to make representations.

Remedying irregularities

- 12.**—(1) An irregularity that arises before the adjudicator has reached a decision resulting from a failure to comply with any provision of these Rules or with a direction of the adjudicator, does not of itself render the proceedings void.
- (2) When any such failure comes to the attention of the adjudicator, the adjudicator may give such directions to remedy or waive the irregularity as the adjudicator thinks necessary.
- (3) The adjudicator may at any time amend an order or amend a direction to correct a clerical error or other accidental slip or omission.

Proof of documents

- 13.**—(1) Any document purporting to be a document duly executed or issued by or on behalf of the adjudicator must, unless proved to the contrary, be deemed to be a document so executed or issued.

(2) A document purporting to be certified by or on behalf of the adjudicator to be a true copy of any entry of a decision in the register will, unless proved to the contrary, be sufficient evidence of the entry and of the matters referred to in it.

Signature of documents

14. Any requirement in these Rules or in a direction of the adjudicator for a document to be signed by a person is satisfied, in the case of a document which is sent electronically in accordance with these Rules or in accordance with a direction of the adjudicator, by the individual who is required to sign the document typing their name or producing their name using a computer or other electronic means.

Calculation of time

15. Where the time prescribed for doing any act under these Rules expires on a day which is not a working day, the act is done in time if done on the next working day.

Change of representative

16.—(1) A party must as soon as is reasonably practicable notify the adjudicator and each other party in writing of the information in paragraph (2) if a party who was previously—

- (a) unrepresented appoints a representative; or
- (b) represented appoints a replacement representative.

(2) The information referred to in paragraph (1) consists of—

- (a) the fact that the party has appointed a representative or a replacement representative;
- (b) the name and contact details of the representative or replacement representative; and
- (c) whether the representative or replacement representative has been authorised to accept service of documents, and if so, the address at which service may be effected.

(3) A notification under paragraph (1) must be signed by the party making the appointment.

(4) If a party who was previously represented ceases to be represented that party must, as soon as reasonably practicable, notify the adjudicator and each other party in writing of—

- (a) the fact that they are no longer represented; and
- (b) any new address for service.

Sending and receipt of notices

17.—(1) Any documents to be served under these Rules must be served—

- (a) by first class post (or an alternative service which provides for delivery on the next working day) or by personal delivery to the postal address given as the address for service;
- (b) where no address for service has been provided, by first class post (or an alternative service which provides for delivery on the next working day) or by personal delivery to the party's registered office, principal place of business, head or main office or last known address; or
- (c) subject to paragraph (2), by an alternative method of service.

(2) Documents may be served by an alternative method of service if the intended recipient has informed the adjudicator and each other party in writing—

- (a) that the intended recipient is willing to accept service by an alternative method; and
- (b) of the relevant information to allow documents to be served by that alternative method.

(3) Any document which is to be served on an unincorporated body may be served on the secretary, manager or similar officer of that body.

(4) Any documents to be filed with the adjudicator must be filed—

- (a) by first class post (or an alternative service which provides for delivery on the next working day) or by personal delivery to an address specified by the adjudicator; or
- (b) by such alternative method as the adjudicator may specify.

(5) Where the adjudicator specifies that documents may be filed using an alternative method of service under paragraph (4)(b), the adjudicator may make such directions in relation to the use of that alternative method as the adjudicator deems appropriate.

(6) Except where rule 20(4) applies, any document which is served or filed in accordance with these Rules shall, unless the contrary is proved, be regarded as having been received—

- (a) where it is sent by first class post (or an alternative service which provides for delivery on the next working day), the second working day after it is posted;
- (b) where it is delivered to the specified address for service, the working day after it is delivered;
- (c) where it is sent by email or by fax, the working day after it is sent; and
- (d) where it is sent by document exchange, the second working day after it is left at the document exchange.

(7) Any document that is served or filed under these Rules must specify the date on which it is served or filed.

(8) The adjudicator may direct that service or filing under these Rules of any documents may be dispensed with and, in those circumstances, may make such consequential directions as the adjudicator deems appropriate.

(9) A party's address for service remains the address specified under rules 20 and 21 until a party serves on the adjudicator and each other party notice of a different address for service.

Disclosure of documents by list and inspection of listed documents

18.—(1) In this rule “relevant document” means a document which is or has been in a party's possession or control and—

- (a) that party relies on in the proceedings;
- (b) adversely affects that party's own case;
- (c) adversely affects another party's case; or
- (d) supports another party's case.

(2) The adjudicator may give a direction that one or more parties must file, and serve on each other party, a list of—

- (a) all relevant documents; or
- (b) relevant documents which relate to specified issues.

(3) A party may make a request for a direction under rule 5 (directions) without giving notice to each other party, authorising that party not to include any relevant document on a list required under these Rules.

(4) A party on whom a list has been served may take or inspect a copy of any document on that list at a reasonable time and place, on giving reasonable notice, except where—

- (a) the document is no longer in the possession or control of the party who served the list; or
- (b) the party who served the list has a right or duty to withhold inspection of the document.

(5) Unless otherwise permitted by a direction, any document provided to the adjudicator or to a party under these Rules may only be used for the purpose of the proceedings in which it was disclosed.

(6) No person may be compelled to produce any document that they could not be compelled to give or produce on a trial of an action in a court of law.

Form of list of documents

19.—(1) A list of documents must be in writing and, subject to paragraph (2), must contain the following information, where available, in relation to each document listed—

- (a) a brief description of the nature of the document;
- (b) whether the document is in the possession or under the control of the party and if it is not, its current location;
- (c) whether it is a document in respect of which the party claims a right or duty to withhold inspection;
- (d) whether the document is an original, a copy certified to be a true copy of the original, an office copy or another type of copy;
- (e) the date of the document;
- (f) the parties to the document or the original author and recipient of the document; and
- (g) the version number or similar identification number or code of the document.

(2) If a large number of documents fall into a particular class, that class of documents may be listed in accordance with paragraph (1) as if it were an individual document.

(3) If a class of documents is listed in accordance with paragraph (2), the description of the class of documents must be sufficiently clear and precise to enable any party receiving the list to identify—

- (a) the nature of the contents of each document included within that class of documents; and
- (b) whether any particular document which exists is included within that class of documents.