

2008 No. 1730

LAND REGISTRATION, ENGLAND AND WALES

The Network Access Appeal Rules 2008

Made - - - - - *30th June 2008*

Laid before Parliament *3rd July 2008*

Coming into force - - - *25th July 2008*

CONTENTS

PART 1

Introduction

1.	Citation and commencement	2
2.	Interpretation	2

PART 2

General powers of the adjudicator

3.	Power of adjudicator to regulate proceedings	3
4.	Case management conferences	3
5.	Directions	4
6.	Related appeals	4
7.	Preliminary questions	4
8.	Representation at hearings	5
9.	Adjournment of hearing	5
10.	Powers of adjudicator to strike out	5
11.	Failure to comply	5
12.	Remedying irregularities	6
13.	Proof of documents	6
14.	Signature of documents	6
15.	Calculation of time	6
16.	Change of representative	6
17.	Sending and receipt of notices	6
18.	Disclosure of documents by list and inspection of listed documents	7
19.	Form of list of documents	8

PART 3

Starting proceedings before the adjudicator

20.	Appeal notice	8
21.	Registrar’s response	9

PART 4
Hearing of appeals

22.	Withdrawal of appeal and unopposed appeals	10
23.	Requirement notice	10
24.	Notification of witnesses	11
25.	Fixing the time and place of the hearing of the appeal	11
26.	Determination without hearing	11
27.	Public hearings and directions for private hearings	11
28.	Evidence	12
29.	Failure to attend a hearing	12
30.	Publication of adjudicator’s decision	12
31.	Notification of adjudicator’s decision	13
32.	Costs	13

PART 5
Appeals from the adjudicator

33.	Permission to appeal to the High Court	13
34.	Decision as to permission to appeal to the High Court	14
35.	Stay of decision pending appeal	14
36.	Appeal remitted by the High Court for rehearing	14

The Lord Chancellor makes the following Rules in exercise of the powers conferred on him by sections 109 and 114 of, and paragraph 4(3) of Schedule 5 to, the Land Registration Act 2002^(a), with the advice and assistance of the Rule Committee under section 127(1) of that Act and after consultation with the Administrative Justice and Tribunals Council in accordance with section 8(1) of the Tribunals and Inquiries Act 1992^(b).

PART 1
Introduction

Citation and commencement

1. These Rules may be cited as the Network Access Appeal Rules 2008 and come into force on 25th July 2008.

Interpretation

2.—(1) In these Rules—

“the 2002 Act” means the Land Registration Act 2002;

(a) 2002 c.9.

(b) 1992 c.53. Section 8 is repealed by paragraph 27 of Schedule 8 and Part 1 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c.15) from a date to be appointed.

“appeal” means an appeal to the adjudicator under paragraph 4(1) of Schedule 5 to the 2002 Act or, if appropriate, an appeal from a decision of the adjudicator to the High Court under section 111(1) and (2) of the 2002 Act;

“appeal notice” means a notice filed under rule 20;

“appellant” means a person who makes an appeal to the adjudicator;

“document” means anything in which information is recorded in any form, and an obligation under these Rules to provide or allow access to a document or a copy of a document for any purpose means, unless the adjudicator directs otherwise, an obligation to provide or allow access to such a document or copy in a legible form or in a form which can be readily made into a legible form;

“file” means send to the adjudicator so that the document is received by the adjudicator within any time limit specified by a direction or under these Rules;

“final decision” means the decision of the adjudicator that determines the appeal;

“party” means the appellant or registrar or any other person who is made a party and references to “other party” shall be construed accordingly;

“register” means the register kept by the adjudicator to record the particulars of appeals to the adjudicator and final decisions of the adjudicator under these Rules;

“registrar’s decision” means the final decision of the registrar that is the subject matter of the appeal;

“response” means the document filed by the registrar under rule 21;

“serve” means send a document to a party so that the document is received by that party within any time limit specified by a direction or under these Rules;

“statement of truth” means a statement signed by the maker of the statement that the maker of the statement believes that the facts stated in the witness statement are true;

“working day” means any day except for Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971(a).

(2) Except where rule 28(1)(a) applies, anything permitted or required by these Rules to be done by a party may be done by the representative of that party.

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.

(a) 1971 c.80.

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.

PART 3

Starting proceedings before the adjudicator

Appeal notice

20.—(1) An appeal must be made by way of a written notice ('the appeal notice') signed, dated and filed by the appellant.

(2) An appeal notice under paragraph (1) must be filed no later than 28 days after the date on which the appellant received notification of the registrar's decision.

(3) Without prejudice to the generality of paragraph (10), an appellant may request a direction under rule 5 (directions) to allow the appeal to be made later than the time limit under paragraph (2).

(4) For the purpose of paragraph (2), the registrar’s decision is deemed to have been notified to the appellant, unless the contrary is proved—

- (a) if sent by post to an address in the United Kingdom, the second working day after posting;
- (b) if sent by post to an address outside the United Kingdom, the seventh working day after posting;
- (c) if sent by electronic transmission, the second working day after transmission;
- (d) if sent by document exchange, the second working day after it was left at the document exchange; or
- (e) if communicated by telephone, the day of the telephone conversation.

(5) The appeal notice must state—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant’s representative (if any);
- (c) the address for service;
- (d) that the appeal notice concerns an appeal against the registrar’s decision;
- (e) the grounds upon which the appeal should be granted in the appellant’s favour; and
- (f) the remedy sought by the appellant.

(6) In paragraph (5)(a), “address” in respect of a corporation means the address of the registered or principal office.

(7) Where a representative, other than a legally qualified representative, is named in paragraph (5)(b) and the appeal notice is signed by that representative on behalf of the appellant, a statement that the representative is authorised to act on the appellant’s behalf must be—

- (a) filed with the appeal notice; and
- (b) signed by the appellant.

(8) Except when there is a good reason why it is not possible, the appellant must, at the same time as filing an appeal notice under paragraph (2), file a copy of—

- (a) the registrar’s decision forming the subject matter of the appeal; and
- (b) any statement of reasons for the registrar’s decision.

(9) The appeal notice must be accompanied by a list of the documents that the appellant relies on in support of the appeal.

(10) The appellant may make a request for directions under rule 5 (directions) when filing the appeal notice.

(11) At the same time as filing the appeal notice, the appellant must serve a copy of that notice and a copy of any other document filed with the appeal notice including any request for a direction (unless rule 5(5)(c) applies) on each other party.

(12) Except where the appeal notice has been struck out in accordance with rule 10 (strike out), as soon as is reasonably practicable the adjudicator must—

- (a) enter particulars of the appeal in the register;
- (b) inform the parties in writing of the date when the adjudicator received the appeal notice; and
- (c) except where rule 5(5)(c) applies, inform the parties in writing of the adjudicator’s determination relating to a request for a direction.

Registrar’s response

21.—(1) The registrar must file a response to the appeal notice.

(2) A response under paragraph (1) must be received by the adjudicator no later than 28 days after the date on which the registrar received the documents served by the appellant in accordance with rule 20(11).

(3) Without prejudice to the generality of paragraph (8), the registrar may request a direction under rule 5 (directions) to allow the response to be made later than the time limit under paragraph (2).

(4) The response must include—

- (a) a statement of whether the registrar intends to take an active part in the appeal proceedings;
- (b) if the registrar intends to take an active part in the proceedings, a statement of the grounds on which the registrar disagrees with the appeal notice;
- (c) the name and address of the registrar’s representative (if any);
- (d) an address for service; and
- (e) a signature made by or on behalf of the registrar.

(5) The response must be accompanied by a list of any documents that the registrar relies upon in the response.

(6) If they were not attached to the appeal notice, the registrar must attach to the response a copy of the decision forming the subject matter of the appeal and the reasons for that decision.

(7) At the same time as the registrar files the response, the registrar must serve a copy of that response and any other document filed with the response (including a request for a direction unless rule 5(5)(c) applies) on the appellant.

(8) The registrar may make a request for directions in accordance with rule 5 (directions) when filing the response.

(9) Except where rule 5(5)(c) applies, when a request under paragraph (3) or (8) has been determined, the adjudicator must serve a copy of the adjudicator’s decision relating to that determination on the parties.

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(a) apply when an order as to costs is made under paragraph (1).

PART 5

Appeals from the adjudicator

Permission to appeal to the High Court

33.—(1) A request to the adjudicator for permission to appeal to the High Court may be made by a party—

(a) S.I. 2003/2171.

- (a) orally at the hearing immediately following the announcement of a decision by the adjudicator; or
- (b) by way of a request filed not later than 14 days after the date on which the notification of a decision is received by the party making the application whether or not the decision was announced orally at a hearing.

(2) When a request is made under paragraph (1)(b), it must be signed by the party seeking permission and must—

- (a) state the name and address of the party seeking permission and of any representative of that party;
- (b) identify the decision of the adjudicator to which the request relates; and
- (c) state the grounds on which the party seeking permission intends to rely before the High Court.

Decision as to permission to appeal to the High Court

34.—(1) A request to the adjudicator for permission to appeal to the High Court must be decided without a hearing unless—

- (a) the decision is made immediately following an oral request under rule 33(1)(a); or
- (b) the adjudicator considers that special circumstances make it appropriate to hold a hearing.

(2) The decision of the adjudicator following a request for permission to appeal to the High Court, together with the reasons for the adjudicator's decision, must be recorded in writing and sent to the parties.

(3) If the adjudicator refuses the request, the notification under paragraph (2) must include notification of the time within which a request may be made to the High Court for permission to appeal to that court.

Stay of decision pending appeal

35.—(1) A party who wishes to make a request under paragraph (2) must make such a request, and set out the grounds for making it, at the same time as making an application to the adjudicator for permission to appeal.

(2) Where the adjudicator grants a party permission to appeal to the High Court, the adjudicator may, on the adjudicator's own initiative or at the request of the party granted permission, stay the implementation of the whole or part of the adjudicator's decision pending the outcome of the appeal to the High Court.

(3) Before reaching a decision under paragraph (2), the adjudicator must invite and consider representations from each other party against the staying of a decision under that paragraph.

(4) The adjudicator must serve notification of any decision made under this rule, and the reasons for that decision, on the parties.

Appeal remitted by the High Court for rehearing

36. Where the High Court remits a case to the adjudicator—

- (a) these Rules, so far as relevant, apply to the case as they did to the original appeal; and
- (b) the adjudicator must, as soon as is reasonably practicable after the remittal, give directions in relation to the case.

On the authority of the Lord Chancellor

30th June 2008

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules are made under the Land Registration Act 2002. They are part of a package of Rules made to support the establishment of a land registry network for carrying out electronic conveyancing as provided by section 92 of, and Schedule 5 to, the 2002 Act. The Network Access Appeal Rules 2008 regulate the procedure to be followed when an appeal is brought to the adjudicator against the decision of the registrar in respect of the entry into or termination of a Network Access Agreement.

General matters relating to appeals brought under these Rules are contained in Part 2 and include the adjudicator's power to make directions, to adjourn a hearing, to strike out a party's case, rules about service and receipt of documents and the information that a list of documents should contain.

Part 3 deals with the way in which an appeal is brought by the appellant and responded to by the registrar. Rule 20 states the information the appellant has to include in, and accompany, the appeal notice. Rule 21 provides that the registrar must file a response to the applicant's appeal notice, stating whether it intends to play an active part in the proceedings. The registrar need only set out grounds on which it disagrees with the appellant's case if the registrar intends to take an active part in the proceedings.

Procedures relating to the hearing of an appeal are contained in Part 4. This includes rules about the summoning and notification of witnesses, the determination of hearings in private, the notification of the adjudicator's decision and reasons for it and the publication of the adjudicator's final decision and the award of costs against a party or a legally qualified representative.

Part 5 provides rules about the procedure for seeking permission to bring an appeal from a decision of the adjudicator to the High Court under section 111 of the Act.

A regulatory impact assessment is not provided for this instrument because no significant impact on the private sector, public sector, charities or voluntary sector is foreseen.

STATUTORY INSTRUMENTS

2008 No. 1730

LAND REGISTRATION, ENGLAND AND WALES

The Network Access Appeal Rules 2008

£3.00

© Crown copyright 2008

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E2668 7/2008 182668T 19585