

**EXPLANATORY MEMORANDUM TO
THE NETWORK ACCESS APPEAL RULES 2008**

2008 No. 1730

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Rules will enable the Adjudicator to HM Land Registry ('the adjudicator') to hear appeals by those aggrieved by a decision of the Chief Land Registrar ('the registrar') about entry into, or termination of, a network access agreement.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Land Registration Act 2002 ('the Act') provides the legislative framework to enable the implementation of e-conveyancing services. Since the Act came into force the Land Registry has been developing its e-conveyancing proposals and drafting secondary legislation, including the Land Registration (Network Access) Rules 2008, required to give effect to the provisions contained in the Act.

4.2 These Rules make provision for a Land Registry Network (LRN) which forms part of the Land Registry's electronic conveyancing ('e-conveyancing') programme. A person will have access to the LRN when they have been given authority under a Network Access Agreement ('NAA') entered into with the registrar. The NAA will regulate the terms upon which the person has been granted access to the LRN.

4.3 Paragraph 4(1) of Schedule 5 to the Act provides that a person who is aggrieved by a decision of the registrar with respect to entry into, or termination of, a network access agreement may appeal against that decision to the adjudicator and Paragraph 4(3) of that Schedule provides that Rules "may make provision about appeals under this paragraph." The Network Access Appeal Rules 2008 ('the Appeal Rules') have been drafted to regulate appeals made under paragraph 4(1) of Schedule 5 to the Act.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Appeal Rules are a necessary part of the new Land Registry e-conveyancing programme.

7.2 Electronic conveyancing by way of the network is to be introduced in stages and, to start with, will be piloted on a voluntary basis. From the middle of this year, it should be possible to make certain applications by way of the network. The first stage of electronic conveyancing, in the sense of transferring and creating interests in land by electronic documents with electronic signatures and electronic applications to register them, is currently planned to start by the end of this year. It will involve electronic charges suitable for use in certain re-mortgages and second mortgages of registered land. In the second stage, due to begin not before the middle of 2009, the intention is to introduce other forms of electronic dispositions, in particular transfers of registered land.

7.3 The Appeal Rules are intended to regulate the practice and procedure to be followed by the adjudicator when an appeal is made to the adjudicator, in respect of decisions of the Land Registry about NAA's. This is an entirely new jurisdiction for the adjudicator.

7.4 These Appeal Rules are minor and are not politically or legally significant. Consultation has taken place with the relevant bodies. These rules should not attract large public or media attention.

Consultation

7.5 A public consultation exercise on the Rules took place between 15 August and 7 November 2007. The consultation paper can be viewed at <http://www.dca.gov.uk/consult/case-track-limits/cp0307.htm>. There were eleven responses to the Rules. Most respondents were content with the Rules as they were or merely suggested grammatical changes.

7.6 Minor amendments were made to the Appeal Rules post-consultation where they appeared to be unduly onerous in respect of the registrar. For example, it is inappropriate in most circumstances to demand that a decision maker justifies their decision before an appeal tribunal. Therefore, the Appeal Rules were simplified to make them less prescriptive, and they give the adjudicator the power to request further information from the registrar if necessary.

7.7 Technical amendments were also suggested following the Land Registration Rule Committee Meeting, held on 18 March 2008. The Rule Committee are obliged to advise and assist on the Rules made under section 127(1) of the Act which encompasses these Rules. At this meeting further technical changes to the NAA Rules were suggested, mainly to Rule 32, 'Costs'. This rule was amended to clarify it, so

that costs can be awarded in wider circumstances than simply improper conduct. More specifically, so that costs can be awarded in favour of a successful litigant. The amendments have been made and the Rules approved by the Rule Committee.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as the changes proposed are minor and should not impact on business, charities, the voluntary or public sectors.

9. Contact

9.1 Olga Kostiw at the Ministry of Justice (telephone: 020 7566 1276 or e-mail olga.kostiw@tribunals.gsi.gov.uk) can answer any queries regarding the instrument.