

2008 No. 1731

LAND REGISTRATION, ENGLAND AND WALES

The Adjudicator to Her Majesty's Land Registry (Practice and Procedure) (Amendment) Rules 2008

<i>Made</i> - - - -	<i>27th June 2008</i>
<i>Laid before Parliament</i>	<i>3rd July 2008</i>
<i>Coming into force</i> - -	<i>25th July 2008</i>

The Lord Chancellor makes the following Rules in exercise of the powers conferred upon him by sections 109(2) and (3), 110(2) and (3), 114 and 128(1) of the Land Registration Act 2002(a) and after consultation with the Administrative Justice and Tribunals Council in accordance with section 8 of the Tribunals and Inquiries Act 1992(b).

Citation and commencement

1. These Rules may be cited as the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) (Amendment) Rules 2008 and come into force on 25th July 2008.

Interpretation

2.—(1) In these Rules “adjudicator” means the Adjudicator to Her Majesty's Land Registry.

(2) A reference to a rule by number alone means the rule so numbered in the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003(c).

Transitional

3.—(1) Subject to paragraph (3), and unless the adjudicator directs otherwise, these Rules apply to any proceedings in which the adjudicator receives the reference or the rectification application on or after 25th July 2008.

(2) Where the adjudicator serves a written notice under rule 5(b) (notice of receipt by the adjudicator of a reference) or makes a direction under rule 17(2) (notice of a rectification application) in relation to a reference or rectification application received by the adjudicator on or after 25th July 2008 but before 25th August 2008, such written notice or direction must specify whether or not these Rules apply to the proceedings.

(3) New rules 8(4) and 9(4), inserted by rules 6(b) and 7(c) of these Rules, apply to any decision of the court in respect of which the final court order is made on or after 25th July 2008.

(a) 2002 c.9.

(b) 1992 c.53 The Administrative Justice and Tribunals Council has replaced the Council on Tribunals under section 44 of and paragraph 30 of Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 (c.15).

(c) S.I. 2003/2171.

Amendments to the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003

4. The Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003 are amended as follows.

5. In rule 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “applicant” insert—

““document” means anything in which information is recorded in any form, and an obligation in 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 access to such document or copy in a legible form or in a form which can be readily made into a legible form;”;

(ii) after the definition of “respondent” insert—

““statement of truth” means—

(a) in the case of a witness statement, 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; or

(b) in the case of other documents, a statement that the party by whom or on whose behalf the document is submitted believes the facts stated in the document are true, signed by either—

(i) the party by whom or on whose behalf the document is submitted; or

(ii) that party's authorised representative, in which case the statement of truth must state the name of the representative and the relationship of the representative to the party;”;

(iii) in the definition of “substantive decision”, after “interim parts of the proceedings” insert “, any order made under rule 8(4) or 9(4),”; and

(iv) in the definition of “witness statement”—

(aa) omit “signed by a witness ”; and

(bb) after “give” insert “and verified by a statement of truth”; and

(b) in paragraph (2)—

(i) for “In these” substitute “For the purposes of these”; and

(ii) omit “or other material”.

6. In rule 8 (adjournment of proceedings before the adjudicator following a direction to commence court proceedings on the whole of the matter under section 110(1))—

(a) in paragraph (3)—

(i) for “Once he” substitute “Subject to paragraph (4), once the adjudicator”; and

(ii) after “final court order” insert “in accordance with rule 7(2)(c)”; and

(b) after paragraph (3) insert—

“(4) Before closing the proceedings in accordance with paragraph (3) the adjudicator may make an order either with or without a hearing and either with or without giving prior notice to the parties if—

(a) such order is necessary, in addition to the final court order, to implement the decision of the court; and

(b) the adjudicator would have had the power to make such order if the adjudicator had made a substantive decision in relation to the proceedings.”.

7. In rule 9 (adjournment of proceedings before the adjudicator following a direction to commence court proceedings on part of the matter under section 110(1))—

- (a) for paragraph (2) substitute—
 - “(2) Once the adjudicator has received notice under rule 7(2)(a) that court proceedings have been issued in relation to the relevant part, the adjudicator must adjourn the proceedings brought under these Rules in relation to that part, pending the outcome of the court proceedings.”;
 - (b) in paragraph (3)—
 - (i) for “Once he” substitute “Subject to paragraph (4), once the adjudicator”; and
 - (ii) after “final court order on the relevant part” insert “in accordance with rule 7(2)(c)”; and
 - (c) after paragraph (3) insert—
 - “(4) Before closing the proceedings in relation to the relevant part in accordance with paragraph (3) the adjudicator may make an order either with or without a hearing and either with or without giving prior notice to the parties if—
 - (a) such order is necessary, in addition to the final court order, to implement the decision of the court; and
 - (b) the adjudicator would have had the power to make such order if the adjudicator had made a substantive decision in relation to the relevant part.”.
- 8.** For rule 12(b) (applicant’s statement of case and documents) substitute—
- “(b) copies of any documents in the applicant’s possession or control which—
 - (i) are central to the applicant’s case; or
 - (ii) the adjudicator or any other party to the proceedings will require in order properly to understand the applicant’s statement of case.”.
- 9.** For rule 13(b) (respondent’s statement of case and documents) substitute—
- “(b) copies of any documents in the respondent’s possession or control which—
 - (i) are central to the respondent’s case; or
 - (ii) the adjudicator or any other party to the proceedings will require in order properly to understand the respondent’s statement of case.”.
- 10.** In rule 14(1) (statement of case)—
- (a) for “and must include” substitute “, be verified by a statement of truth and include”;
 - (b) after sub-paragraph (c) insert “and”; and
 - (c) omit sub-paragraph (d).
- 11.** In rule 16(1) (form and contents of a rectification application)—
- (a) in sub-paragraph (b) for “signed by the applicant or the applicant’s duly authorised representative” substitute “verified by a statement of truth,”;
 - (b) omit sub-paragraph (d)(iv); and
 - (c) for sub-paragraph (e)(i) substitute—
 - “(i) copies of any documents in the applicant’s possession or control which—
 - (aa) are central to the applicant’s case; or
 - (bb) the adjudicator or any other party to the proceedings will require in order properly to understand the rectification application; and”.
- 12.** In rule 17 (notice of a rectification application)—
- (a) in paragraph (2) after “must” insert “either serve, or direct the applicant to”; and
 - (b) in paragraph (3)—
 - (i) omit “adjudicator must specify in the”; and
 - (ii) after the first occurrence of “paragraph (2)(a)” insert “must specify”.

13. In rule 18 (objection to a rectification application)—

(a) for sub-paragraph (a)(i) substitute—

“(i) a written statement addressed to the adjudicator, dated and verified by a statement of truth, setting out the grounds for the objection;”;

(b) omit sub-paragraph (a)(ii); and

(c) for sub-paragraph (a)(iii) substitute—

“(iii) copies of any documents in the party’s possession or control which—

(aa) are central to the party’s case; or

(bb) the adjudicator or any other party to the proceedings will require in order properly to understand the party’s written statement;”.

14. For rule 20 (directions) substitute—

“Directions

20.—(1) The adjudicator may at any time, on the application of a party or otherwise, give directions to enable the parties to prepare for a hearing, or to assist the adjudicator to conduct the proceedings or determine any question in the proceedings with or without a hearing.

(2) Such directions may include, but are not limited to—

(a) a direction that the parties attend a case management conference or a pre-hearing review; and

(b) such other directions as are provided for in these Rules.”.

15. In rule 21 (form of directions)—

(a) in paragraph (2) after “must” insert “, where appropriate,”; and

(b) in paragraph (3) omit “or any other material”.

16. In rule 24 (addition and substitution of parties)—

(a) in paragraph (5) after “must” insert “either serve, or direct one or more of the existing parties to”;

(b) for paragraph (6)(b) substitute—

“(b) copies of any documents in the new party’s possession or control which—

(i) are central to the new party’s case; or

(ii) the adjudicator or any other party to the proceedings will require in order properly to understand the new party’s statement of case.”; and

(c) in paragraph (10)—

(i) for “Following” substitute “When directing”;

(ii) after “substitution of parties” insert “or at any time thereafter”; and

(iii) in sub-paragraph (c)—

(aa) for “listed in the new party’s list of documents” substitute “under paragraph (6)(b)”;

(bb) for “served on the adjudicator” substitute “served by or on the adjudicator and each of the other parties”.

17. In rule 27 (disclosure and inspection of documents)—

(a) in paragraph (1) omit “or other material”; and

(b) for paragraph (2) substitute—

“(2) Within 28 days after service of the respondent’s statement of case under rule 13 or the lodging of an objection under rule 18, each party must—

- (a) serve on the adjudicator and each of the other parties a list, which complies with rule 47, of all documents in that party's possession or control which—
 - (i) that party intends to rely upon in the proceedings;
 - (ii) adversely affect that party's own case;
 - (iii) adversely affect another party's case; or
 - (iv) support another party's case; and
 - (b) send to the adjudicator copies of all documents in the list served under subparagraph (a).
- (3) Paragraph (4) applies to documents—
- (a) referred to in a party's—
 - (i) statement of case;
 - (ii) rectification application under rule 16(1); or
 - (iii) written statement under rule 18(a)(i); or
 - (b) appearing on a list served by a party under paragraph (2).
- (4) In addition to any other requirement in these rules to disclose or provide copies of documents, in relation to any document referred to in paragraph (3) each party must—
- (a) permit any other party to inspect and take copies on reasonable notice and at a reasonable time and place; and
 - (b) provide a copy if requested by another party on payment by such other party of reasonable copying costs.
- (5) Paragraphs (2), (3) and (4) are subject to any direction of the adjudicator to the contrary.
- (6) The adjudicator may at any time give directions requiring a party to state whether that party has any particular document, or class of documents, in its possession or control and, if so, to comply with the requirements of paragraphs (2), (3) and (4) in relation to such documents as if one of the categories at paragraph (2)(a) applied to them.”.

18. In rule 28(1) and (3)(e) (requirement notices) omit “or other material”.

19. In rule 30(1)(c), (4) and (6) (site inspections) for “Council on Tribunals” substitute “Administrative Justice and Tribunals Council”.

20. After rule 32 (scope of part 5) insert—

“Summary disposal

32A.—(1) The adjudicator may summarily dispose of the proceedings or any particular issue in the proceedings on an application by a party or of its own motion if—

- (a) the adjudicator considers that the applicant or respondent has no real prospect of succeeding in the proceedings or on the issue; and
- (b) there is no other compelling reason why the proceedings or issue should not be disposed of summarily.

(2) Except with the permission of the adjudicator, an applicant may not apply for summary disposal until the respondent has served a statement of case or lodged an objection (as appropriate), or the respondent's time to do so has expired.

(3) A respondent may apply for summary disposal at any time after the applicant has served a statement of case or rectification application (as appropriate), or (in the case of service of a statement of case) the applicant's time to do so has expired.

(4) Paragraph (5) applies where—

- (a) a respondent applies for summary disposal before serving a statement of case or lodging an objection (as appropriate) and before the time to do so has expired; and

(b) that application does not result in the disposal of the entire proceedings.

(5) In the circumstances described in paragraph (4) the respondent's time for serving a statement of case or lodging an objection is extended to—

- (a) 28 days after service on the respondent of the adjudicator's decision in relation to the application for summary disposal; or
- (b) such other time as the adjudicator directs.

(6) An application for summary disposal must include a witness statement in support of the application. That witness statement must state that the party making the application—

- (a) believes that the other party has no real prospect of succeeding on the proceedings or on the issue to which the application relates; and
- (b) knows of no other reason why the disposal of the proceedings or issue should not be disposed of summarily.

(7) When serving a notice under rule 51(5) or (7), or directing the party making the application to serve a notice under rule 51(5), and such notice relates in whole or in part to summary disposal, the adjudicator must give directions for the service of evidence by the parties and for the determination of the issue of summary disposal.

(8) When the adjudicator determines the issue of summary disposal the adjudicator may make an order—

- (a) disposing of the proceedings or of any issue; or
- (b) dismissing the application for or intention to consider summary disposal.

(9) Where an order made under paragraph (8) does not dispose of the entire proceedings, the adjudicator must give case management directions as to the future conduct of the proceedings.”.

21. Omit rule 37 (attendance at hearings by members of the Council on Tribunals).

22. In rule 40 (substantive orders and written reasons)—

- (a) for paragraph (1)(c) substitute—
 - “(c) be sealed and state the name of the person making the order;”;
- (b) in paragraph (1)(f) before “state” insert “where appropriate,”; and
- (c) in paragraph (3) omit “or any other material”.

23. After rule 41 (substantive orders on a reference that include requirements on the registrar) insert—

“Orders under rule 8(4) or 9(4)

41A. An order made under rule 8(4) or 9(4) must—

- (a) comply with the requirements of rule 40(1)(a), (b), (c) and (f), (2), (3), (4) and (5) as if it were a substantive order;
- (b) identify the decision of the court which the order implements; and
- (c) state the reasons why the order complies with rule 8(4)(a) or 9(4)(a).”.

24. In rule 42 (costs)—

- (a) for paragraph (1)(a)(i) substitute—
 - “(i) the conduct of the parties—
 - (aa) in respect of proceedings commenced by a reference, during (but not prior to) the proceedings; or
 - (bb) in respect of proceedings commenced by a rectification application, before and during the proceedings;”;
- (b) in paragraph (1)(b) omit “during the proceedings”;

- (c) for paragraph (4) substitute—
 - “(4) An order as to costs may, without limitation—
 - (a) require a party to pay the whole or a part of the costs of another party and—
 - (i) specify a fixed sum or proportion to be paid; or
 - (ii) specify that costs from or until a certain date are to be paid;
 - (b) if the adjudicator considers it impracticable to make an order in respect of the relevant part of a party’s costs under paragraph (a), specify that costs relating to a distinct part of the proceedings are to be paid;
 - (c) specify an amount to be paid on account before costs are agreed or assessed; or
 - (d) specify the time within which costs are to be paid.”;
- (d) for paragraph (5) substitute—
 - “(5) The adjudicator may—
 - (a) summarily assess the whole or a part of a party’s costs; or
 - (b) specify that, if the parties are unable to reach agreement on an amount to be paid, the whole or a part of a party’s costs be assessed in a specified manner.”;
- (e) in paragraph (6)—
 - (i) for “A costs order” substitute “An order as to costs must be recorded in a costs order and”; and
 - (ii) in sub-paragraph (c) for “signed by the adjudicator” substitute “sealed and state the name of the person making the order”; and
- (f) for paragraph (11) substitute—
 - “(11) Where costs are to be assessed on the indemnity basis, the adjudicator must resolve in favour of the receiving party any doubt as to the reasonableness of the incurring or the amount of the costs.”.

25. In rule 43(6)(c) (costs thrown away) for “signed by the adjudicator” substitute “sealed and state the name of the person making the order”.

26. In rule 45(7)(e) (appeals to the High Court) for “signed by the adjudicator” substitute “sealed and state the name of the person making the order”.

27. In rule 47 (list of documents and documents)—

- (a) in paragraph (1)—
 - (i) after “writing and” insert “, subject to paragraph (1A),”; and
 - (ii) omit paragraph (b); and
- (b) after paragraph (1) insert—
 - “(1A) 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.
 - (1B) If a class of documents is listed in accordance with paragraph (1A), 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.”.

28. In rule 48(2) (evidence) omit “or other material”.

29. In rule 50 (service of documents)—

- (a) in paragraph (4)(c) omit “subject to paragraph (5),”; and

(b) omit paragraph (5).

30. In rule 51 (applications, actions by the adjudicator of his own motion, notification, representations and objections)—

(a) in paragraph (5)—

- (i) after “must” insert “either serve, or direct the party making the application to”; and
- (ii) after “affected by it” insert “, and any such direction to the party making the application must include the information to be included in the notice under paragraph (6)(d)”;

(b) in paragraph (6)—

- (i) for “In the” substitute “The”; and
- (ii) omit “the adjudicator”;

(c) in paragraph (10) after “required to” insert “serve, or direct the applicant to”; and

(d) for paragraph (11) substitute—

“(11) Paragraph (10) does not apply to notices—

- (a) under paragraphs (5) or (7) which relate to a proposal that the adjudicator exercise the power under rule 32A(1); or
- (b) required to be served by rule 33.”.

Signed by authority of the Lord Chancellor

27th June 2008

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003 (S.I. 2003/2171), which came into force on 13th October 2003.

The amendments have effect as follows:

Disclosure of documents

Rules 5(a)(i) and (b), 15(b), 17(a), 18, 22(c) and 28 insert and apply a new definition of "document" which covers information in all formats (for instance, electronic files and data). Rules 8, 9, 10(b) and (c), 11(b) and (c), 13(b) and (c) and 16(b) and (c)(iii) reduce the disclosure requirements when serving statements of case (and equivalent documents) to require only those documents which are central to a party's case or are required to understand a statement of case. Rules 17(b) and 27 set up a new disclosure process which takes place following completion of the statement of case stage of the proceedings.

Statements of truth

Rules 5(a)(ii) and (iv), 10(a), 11(a) and 13(a) create a new requirement that witness statements, statements of case and similar documents be verified by a statement of truth.

Orders putting into effect court decisions

Rules 5(a)(iii), 6, 7 and 23 permit an adjudicator to make an additional order before closing the proceedings (or the relevant part of them) where a question has been referred to court and the court has made a substantive decision on part or all of the reference. The adjudicator's order must be consistent with the court order, necessary to put the court order into effect and within the normal powers of the adjudicator.

Service of documents by parties

Rules 12, 16(a) and 30(a), (b) and (c) enable the adjudicator to direct a party (rather than the adjudicator) to serve documents which the party produces (for example statements of case and applications). Rule 29 enables documents to be served by document exchange on parties which have a document exchange box number, without any need for formal consent by the party.

Other rules relating to directions

Rule 14 permits the adjudicator to make directions for case management conferences and pre-hearing reviews. Rules 15(a) and 22(b) changes the requirement to include a statement in directions and orders of the possible consequences of a failure to comply to an option to do so. Rule 16(c)(i) and (ii) permits the adjudicator to make directions relating to the addition or substitution of parties at any time after the addition or substitution.

Replacement of the Council on Tribunals by the Administrative Justice and Tribunals Council

Rule 19 changes references to the Council on Tribunals to the Administrative Justice and Tribunals Council. Rule 21 deletes the entitlement of a member of the Council on Tribunals to attend any hearing of the adjudicator. An equivalent entitlement has been established by paragraph 22 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(a).

(a) 2007 c.15.

Summary disposal

Rules 20 and 30(d) permit the adjudicator to dispose summarily of proceedings or an issue within a set of proceedings.

Sealing of orders

Rules 22(a), 24(e)(ii), 25 and 26 replace the requirement for orders to be signed by the adjudicator with a requirement that orders be sealed and state the name of the person making them.

Costs

Rule 24(a) and (b) permits the adjudicator to take into account the conduct of the parties before the commencement of proceedings by rectification application as well as during such proceedings. Rule 24(c), (d) and (e)(i) increases the range of types of costs order which are expressly available to be made by the adjudicator. Rule 24(f) corrects an error by providing for doubt to be resolved in favour of the receiving (rather than the paying) party when assessing costs on the indemnity basis.

STATUTORY INSTRUMENTS

2008 No. 1731

LAND REGISTRATION, ENGLAND AND WALES

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