

EXPLANATORY MEMORANDUM TO
THE LAND REGISTRATION (NETWORK ACCESS) RULES 2008

2008 No. DRAFT

1. This explanatory memorandum has been prepared by Her Majesty's Land Registry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 Conveyancing is largely paper-based at the moment. Land Registry is in the process of setting up an electronic communications network that will allow for conveyancing to be carried out electronically so that, ultimately, it can be an entirely paper-free process. Under the Land Registration Act 2002 ("the Act"), access to the network is to be limited to those persons authorised by way of a network access agreement with the Chief Land Registrar ("the registrar"). The draft Land Registration (Network Access) Rules 2008 ("the Network Access Rules") make provision about such agreements. They identify the different forms of network access agreement, set out the criteria to be met before the registrar is obliged to enter into such an agreement with an applicant, specify provisions which must be included in the agreement, and set out the grounds and procedure for termination of the agreement by the registrar.

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

3.1 None.

4. **Legislative Background**

4.1 Under the Act, the registrar is obliged to continue to keep a register of the ownership of land in England and Wales. More precisely, he keeps a register of titles to legal estates in land (for example, freeholds and leases having more than seven years to run) and several other types of estate. Not all legal estates are registrable, and not all those which are registrable have actually been registered.

4.2 A registered owner of land or of a charge (in other words, a mortgage) has certain powers of disposition under the Act. For example, in the case of an owner of land, those powers include the power to transfer the land, to charge it, to grant a lease out of it or to grant a right of way over it. The transfer, charge, lease and grant are all examples of "dispositions".

4.3 Certain dispositions, such as a transfer or charge, must be completed by registration. They do not take effect in law until this has been done.

4.4 Section 92 of the Act allows for the registrar to provide, or arrange for the provision of, an electronic communications network for purposes relating to the carrying

on of transactions which involve registration and are capable of being effected electronically.

4.5 Schedule 5 to the Act makes provision in respect of this network, including that a person who is not a member of Land Registry may only have access to the network by means of a network access agreement with the registrar. It goes on to provide that the registrar must enter into a network access agreement with an applicant if that applicant meets such criteria as rules may provide. And, subject to a rule-making power and to one exception, the terms on which access is authorised “shall be such as the registrar thinks fit”. The latest draft of the principal type of network access agreement, including the first part of the Technical Manual which forms part of the agreement, is available on Land Registry’s website: <http://www.landregistry.gov.uk/>.

4.6 Schedule 5 also provides that rules may regulate the terms on which access is authorised and that they may make provision about termination of network access agreements by the registrar. These are matters dealt with by the Network Access Rules.

4.7 It is proposed that further rules, subject to the negative resolution procedure, will make provision (i) for legal charges to be capable of being created in electronic form, in the circumstances prescribed, using the network, and (ii) for how to go about transactions carried on by means of the network. These further draft rules (the draft Land Registration (Electronic Conveyancing) Rules 2008) were the subject of a public consultation which ended on 16 November 2007.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister of State, Ministry of Justice, has made the following statement regarding Human Rights:

“In my view the provisions of the Land Registration (Network Access) Rules 2008 are compatible with the Convention rights”.

7. Policy background

7.1 The joint Law Commission and Land Registry Consultation Document “Land Registration for the Twenty-first Century: A Conveyancing Revolution” (Law Com No 271) said of the Land Registration Bill (which, with some small amendments, was enacted as the Act) that its “most important single function” was “to create the necessary legal framework for the introduction of electronic conveyancing”. Electronic conveyancing was one of the main issues addressed in the preceding Consultative Document (Law Com No 254), and nearly 80 per cent of those who responded on the issue were in favour of the principle of electronic conveyancing.

7.2 The Network Access Rules were the subject of a consultation paper, issued on behalf of the Lord Chancellor, and published in February 2007 with a return date of 21 May 2007. This consultation paper was sent to Land Registry’s credit account customers, government departments, regulatory and representative bodies and specific individuals.

It was also publicised through the Land Registry website and by way of a press notice issued to the “trade press”: those interested could obtain a copy by downloading it from the website or by contacting Land Registry for a hard copy. 119 responses were received to this public consultation. Generally, the responses were broadly favourable. There were a substantial number of queries about how electronic conveyancing will work in practice, and some adverse comment about what was thought to be a lack of information on this point. This can be explained, in part at least, by the fact that the consultation was concerned with only one set of the rules required for electronic conveyancing; because of the nature of the rules involved, the subsequent consultation on the Land Registration (Electronic Conveyancing) Rules 2008, referred to in paragraph 4.7, contained more information about how electronic conveyancing is likely to work. Apart from this point, the most common concerns were with the limitation of liability clauses prescribed in the Network Access Rules (44 respondents expressed this concern) and the rights of the registrar relating to suspension and termination (a concern expressed by 34 respondents). Amendments have been made to the Network Access Rules (and the draft of the principal type of network access agreement) to take account of these and other concerns expressed by respondents. Further details are given in the report on the responses to the consultation paper, which is available on Land Registry’s website: <http://www.landregistry.gov.uk/>.

7.3 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 of registered land. The additional secondary legislation referred to in paragraph 4.7 will be required before this first stage can start. At a subsequent 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. Again, additional negative resolution procedure secondary legislation will be required.

7.4 Land Registry regularly takes part in educational events and writes articles to explain to those concerned with conveyancing the Land Registry plans for electronic conveyancing and the progress that has been made. Nearer the time that the first stage of electronic conveyancing is introduced, those interested in participating will be provided with guidance as to how to get started and the benefits of using the network. When users begin to use the network, they will have access to further training materials. Land Registry intends to liaise with representative bodies, such as the Law Society and the Council of Mortgage Lenders, to try to ensure that all the information it provides is fit for purpose and to develop protocols to ensure that the services provided by the network operate effectively in the conveyancing process.

8. Impact

8.1 An Impact Assessment has not been prepared.

8.2 As explained above, the Network Access Rules make provision about network access agreements, which authorise access to the electronic communications network being set up by Land Registry. This network is merely a means by which electronic

conveyancing can operate. So, as far as those involved in conveyancing are concerned, it does not have any benefits in itself. Nor are there likely to be any significant costs associated with network access agreements; in particular, there will be no charge made by Land Registry for entering into such agreements. Costs and benefits to those outside the Land Registry will only arise when the network is capable of being used for effecting dispositions, which will not be before the further rules referred to in paragraph 4.7 come into effect. There will be an Impact Assessment to accompany these further rules.

8.3 In terms of public sector costs, the Land Registry's costs in setting up the network will not reach the threshold that would trigger completion of a Public Sector Impact Assessment.

9. Contact

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