EXPLANATORY MEMORANDUM TO

THE LAND REGISTRATION (NETWORK ACCESS) (AMENDMENT) RULES 2011

2011 No. 1813

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

2. Purpose of the instrument

2.1 The Land Registration (Network Access) (Amendment) Rules 2011 amend the Land Registration (Network Access) Rules 2008 (the Network Access Rules). The Network Access Rules make provision about network access agreements, which authorise access to the Land Registry's electronic services.

2.2 The amendments are primarily to make the criteria to be met for entry into a network access agreement consistent with provisions of the Legal Services Act 2007 (the Legal Services Act).

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

None

4. Legislative Context

4.1 Under the Land Registration Act 2002 the Chief Land Registrar (the registrar) is under a duty to continue to keep a register of title to legal estates in land (in particular, freeholds and leases having more than seven years to run) and several other types of estate, including charges (also known as mortgages). A registered owner of land or of a charge has certain powers of disposition under the Act; some of these dispositions, such as a transfer, many leases and the grant of a legal charge, must be completed by registration and do not take effect in law until this has been done.

4.2 The Land Registration Act 2002 allows for the registrar to provide an electronic communications network for purposes relating to the carrying on of transactions which involve registration. Access to the network is limited to those persons authorised by way of a network access agreement with the registrar. The Network Access Rules make provision about such agreements, including the criteria to be met before the registrar is obliged to enter into such an agreement.

4.3 This instrument is to ensure that the Network Access Rules are consistent with the terms of the Legal Services Act. The Legal Services Act makes provision for the regulation of persons and bodies who carry on certain legal activities – "reserved legal activities". It sets out who is entitled to carry out reserved legal activities and the penalties

4.4 In addition, Part 5 of the Legal Services Act will allow for the establishment of licensed bodies (also known as alternative business structures) to offer reserved legal activities. It is expected that the first alternative business structures will be established in October 2011. Alternative business structures will enable lawyers and non-lawyers to work together to deliver legal and other services.

4.5 Instruments have also been drafted to amend the Land Registration Rules 2003 and the Land Registration (Proper Office) Order 2010, to make them consistent with the Legal Services Act. The rules amending the former are subject to the negative parliamentary procedure, and the Order amending the latter is not subject to any parliamentary procedure but must be laid before Parliament after being made, so they have a separate explanatory memorandum.

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

Lord McNally, 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) (Amendment) Rules 2011 are compatible with the Convention rights."

7. Policy background

7.1 Under the Legal Services Act only an "authorised person" is allowed to carry on a reserved legal activity. "Person" includes a body of persons, corporate or unincorporated. Reserved legal activities include "reserved instrument activities", two categories of which specifically refer to preparing documents for the purposes of, and making applications under, the Land Registration Act 2002 (the relevant reserved instrument activities).

7.2 This instrument seeks to ensure that all legal service providers who are authorised to carry on the relevant reserved instrument activities under the Legal Services Act will be potentially entitled to a network access agreement under the Network Access Rules, provided they also meet the other criteria set out in them.

7.3 The revised wording adopted for the categories of authorised person who may be entitled to a network access agreement is inclusive, not exclusive. A person or body will still be an authorised person if they are authorised to carry out other reserved legal activities, so long as the authorisation includes the relevant reserved instrument activities.

7.4 The revised wording also allows for a person or organisation, such as a bank, building society, local authority, construction company or charity, which employs in-house conveyancers to undertake conveyancing and land registration activities, to be potentially entitled to a network access agreement.

7.5 Amendments have been made to the other criteria for the grant of a network access agreement to—

- make them consistent with the wording of the Legal Services Act,
- ensure that all legal services providers, including new licensed bodies, are treated equally under the Network Access Rules.

7.6 The Land Registry does not intend to consolidate the Network Access Rules at this time because of the limited nature of the amendments. An informal consolidated text of the Network Access Rules will be available to the public free of charge on the Land Registry website when this instrument comes into force (anticipated to be in October 2011) - http://www.landregistry.gov.uk.

8. Consultation outcome

8.1 The consultation "Land Registration and the Legal Services Act 2007" ran for 12 weeks from 6 December 2010 to 28 February 2011. It was a combined consultation relating to this instrument and to the two other instruments mentioned in paragraph 4.5. In respect of this instrument, on behalf of the Lord Chancellor the Land Registry directly informed and invited comment from 83 stakeholders, including regulatory and representative bodies, government departments, and individuals. In addition, all Land Registry customers and the general public were invited to participate, by means of a message posted on the Land Registry website and electronic services log-in page.

8.2 The Land Registry received 15 responses to the consultation. Those who responded were generally in favour. Nine of the 15 respondents expressed general approval of the proposals, four respondents expressed partial support but had reservations on a specific point that is not relevant to this instrument. Two respondents did not comment generally on the proposals, but raised specific points.

8.3 A detailed analysis of the consultation outcome is contained in the "Report on Consultation – Land Registration and the Legal Services Act 2007", published on the Land Registry website: http://www1.landregistry.gov.uk/consultations.

9. Guidance

The Land Registry Portal Guidance Notes (for those using electronic services) will be updated. The Land Registry will inform customers about the legislative changes to its rules through the "Latest news" section of its website and through *Landnet*, the Land Registry's magazine for practitioners. The Land Registry plans to issue a press notice once the instrument has been laid. The report on the consultation is available on its website. A further press notice is to be issued just before the instrument comes into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal, as the changes to the Network Access Rules are designed to reflect what is provided by the Legal Services Act.

10.2 The impact on the public sector is minimal. The criteria relating to government departments have not changed.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business but does not impose any additional burden on them over and above that already contained in the Legal Services Act.

11.2 The Legal Services Act applies to all legal service providers whatever their size, and this instrument is intended to align the Network Access Rules with the provisions of that Act. Therefore it is not possible to make any exemptions to minimise the impact of the requirements on firms employing up to 20 people.

12. Monitoring & review

12.1 The success criteria for this instrument are to maintain high standards of land registration applications under the more flexible market conditions provided by the Legal Services Act, and to ensure that the integrity of the land register has been protected, while providing consistency with the Act.

12.2 A review will be carried out in 2015. More detail is included in Annex 1 of the Impact Assessment.

13. Contact

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