

**EXPLANATORY MEMORANDUM TO**  
**THE LAND REGISTRATION (AMENDMENT) RULES 2020**

**2020 No. 425**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Land Registry and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The Land Registration (Amendment) Rules 2020 (“the amendment rules”) amend the Land Registration Rules 2003 (S.I. 2003/1417) (“the principal rules”) to allow for certain prescribed periods of time to exclude days when HM Land Registry is not able to operate normally.

**3. Matters of special interest to Parliament**

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

- 3.1 This instrument is being laid in breach of the 21-day rule for Parliament to pray against Statutory Instruments.
- 3.2 Although HM Land Registry is still operating, this could change temporarily, and with little warning, if the disruption caused by the coronavirus virus were to increase substantially. In these circumstances, HM Land Registry considers it necessary to act without delay in securing changes to legislation to prevent individuals and businesses dealing with HM Land Registry from being prejudiced by any such interruption in its services.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

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

## 6. Legislative Context

- 6.1 The Land Registration Act 2002 (“the 2002 Act”) makes provision for the Chief Land Registrar (“the registrar”) to keep a register of title to legal estates in land: in particular, freeholds, leases with more than seven years to run, and mortgages. Other interests in land can also be referred to in the register, subject to the provisions of the 2002 Act and the principal rules. The principal rules make detailed provision for keeping the register and for making applications to change the register or create new entries in it.
- 6.2 A purchaser intending to acquire a legal estate in land will normally apply for an official search with priority (“an official search”) in order to protect the priority of that interest in the period between its being acquired and registration. The official search gives the applicant a priority period: if their application for registration is made within this period, their interest takes priority over any third-party’s interest which has not been recorded in the register before the start of the priority period. The principal rules fix this priority period as being 30 working days – being days other than Saturdays or Sundays, Christmas Day, Good Friday or bank holidays.
- 6.3 Various notice periods, and the minimum period for responding to requisitions by the registrar, are also calculated under the principal rules by reference to working days. On the expiry of these periods, action has to be, or can be, taken by the registrar.

## 7. Policy background

### *What is being done and why?*

- 7.1 If the disruption caused by the coronavirus virus were to increase substantially, this could temporarily affect HM Land Registry’s ability to operate the register of title. This might prejudice individuals and businesses with the benefit of a priority period under a priority search, as the relevant period would continue to run but the registrar would not be able to deal with their application and so it would not be treated as having been made for the purposes of the legislation. Similarly, the prescribed period for responding to a notice or requisition would continue to run but the registrar might be unable to establish whether the response had been delivered in time. HM Land Registry being unable to deal with queries might also make it difficult to respond to notices and requisitions.
- 7.2 These amendment rules allow for the registrar to do for working days what he can currently do under the principal rules for business days, which is to certify them as “interrupted days” if satisfied that on those days there is likely to be an event or circumstances causing a substantial interruption in the normal operation of HM Land Registry. The registrar must give notice of any such certification and it must take place before the start of the day or period of days being certified. An interrupted business day is treated as not being a business day; likewise, an interrupted working day would be treated as not being a working day. As priority periods etc are calculated by reference to a particular number of working days, the effect is to delay the expiry date.
- 7.3 How this would work with official searches can be illustrated by an example. **A** enters into a contract to buy from **B**; **A**’s conveyancer carries out an official search; the search certificate is issued and this gives the prescribed priority period of 30 working days. **C** then applies for the entry of a restriction in the register to prevent any other application being registered without **C**’s consent. If, because of a temporary closure,

A's application to register his or her transfer cannot be made within this priority period, A's application for registration will lose priority, which means that the registrar will not be able to register the application without compliance with the restriction. If, on the other hand, the registrar can stop an ordinary weekday from being regarded as a working day under the rules, then the expiry of A's priority period is delayed until the period of disruption ends and normal services resume.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 The Law Commission reviewed the Land Registration Act 2002 in its Twelfth Programme of Work. If changes to the Act are made as a result, there will need to be a full review of the principal rules. HM Land Registry is therefore awaiting the Government's response to the Law Commission's Report work before consolidating the principal rules. In the meantime, an informal consolidated text is available to the public free on our website—<https://www.gov.uk/government/publications/land-registration-rules-2003> – and this text will take account of the amendment rules.

## **10. Consultation outcome**

10.1 This amending instrument has been drafted following brief engagement with representatives of conveyancers and other interested parties. In addition, the Rule Committee, consisting of a High Court judge and including representatives from the Bar, the Law Society, lenders, conveyancers and surveyors, has considered the draft. The urgency of the situation has precluded any greater degree of consultation.

## **11. Guidance**

11.1 The amendment rules will not require any change in practice on the part of applicants or others dealing with HM Land Registry. In the event that certification of a day as an interrupted day were to take place, the registrar would be required to give notice of the fact. The notification would explain the effect, namely that the expiry date of certain prescribed periods would be delayed. HM Land Registry would also provide further guidance for conveyancers and others on its website <https://www.gov.uk/government/organisations/land-registry>.

## **12. Impact**

12.1 The direct impact on business, charities or voluntary bodies is limited but beneficial in preventing unfairness. Where businesses, charities and voluntary bodies have protected an intended purchase or other disposition of land by an official search, the period of protection this gives will, in effect, be extended; similarly, where they have a prescribed period for responding to a notice, that period will also, in effect, be extended. The extension will be until HM Land Registry is able to operate normally again.

12.2 The direct impact on the public sector is the same, namely, limited but beneficial.

12.3 An Impact Assessment has not been prepared for this instrument because of the need to make the amendment rules urgently to prevent prejudicing applicants and others

dealing with the registrar in the event that, because of the coronavirus pandemic or other exceptional circumstances, HM Land Registry were temporarily unable to operate.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 No mitigating action is to be taken because the legislation does no more than allow for the protection of businesses and individuals who might otherwise be adversely affected by a temporary cessation of business by HM Land Registry.

### **14. Monitoring & review**

- 14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Nadim Zahawi has made the following statement: “Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and Statutory Review Guidance for Departments published under section 31 (3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument. It merely allows for applicants and others dealing with HM Land Registry to avoid being prejudiced in the event of HM Land Registry temporarily ceasing to operate for a while.”

### **15. Contact**

- 15.1 Patrick Milne at HM Land Registry, Telephone: 0300 006 7294 or email: [patrick.milne@landregistry.gov.uk](mailto:patrick.milne@landregistry.gov.uk) can answer any queries regarding the instrument.
- 15.2 Robin Malpas, Deputy Director at HM Land Registry can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nadhim Zahawi, Parliamentary Under Secretary of State, Minister for Business and Industry at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.