

Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Master of Faculties (MoF) application for approval of alteration to its regulatory arrangements to the Notaries (Post Admission) Rules 2009.

The Legal Services Board (LSB) has approved the Master of Faculties (MoF) alterations to its Notaries (Post Admission) Rules 2009. This Notice sets out the basis for the LSB approval and the decision taken, including a brief description of the alterations.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“the Act”) to review and approve or reject alterations to the regulatory arrangements of the Approved Regulators. The MoF is an approved regulator.
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed alteration to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB’s rules.
4. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the Regulatory Objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

5. The chronology for handling of this application can be found towards the end of this Decision Notice.

Background

6. The MoF submitted an application on 5 September 2011 requesting consideration under the exemption process. On 23 September 2011 we advised the MoF that the changes introduced a significant mandatory requirement for all new notaries, as well as potential supervisors, and it will therefore need to be considered under the full approval process and not as an exemption.

Decision

7. The proposed amendments are the MoF response to the recommendations in the [Nick Smedley report](#) (pg.16) on the smaller ARs, which noted that there needs to be greater supervision of the small number of notaries who do not work in an office with other legal practitioners and lack the collegiate support that such an office can provide. This is of particular concern where that notary is holding client monies and carrying out conveyancing and probate as a notary only.
8. The changes apply to newly admitted notaries only. It is proposed that newly admitted public notaries who propose to engage in reserved instrument activities and/or probate in their capacity as notaries (as distinct from those who are dually qualified solicitors, licensed conveyancers or legal executives) should undertake 3 years specific supervision in either or both of these areas under the supervision of a notary, solicitor or licensed conveyancer².
9. Notaries who have already been released from supervision who have not previously conducted reserved instrument activities and/or probate activities but who subsequently wish to commence such activities as a notary public, must apply to the Master to set an additional period of supervision. The Master will have regard to the experience of the Notary (i.e. if they are dual qualified who may have conducted activities under the SRA or CLC) in setting the appropriate period.
10. While processing the application two issues were raised by the LSB which led to further amendments to the Notaries (Post Admission) Rules 2009. This includes the additional paragraphs 5(2)(c) and 5(3)(c) which deal with additional inspection visits for any notaries to whom the additional year's supervision requirements will apply and, the amended rule 4(1D) to be deleted and replaced, outlining that a notary may obtain supervision from a solicitor or an appropriately authorised licensed conveyancer who has been in practice as such for a minimum period of five years.
11. We are satisfied that, having considered the application in the context of the criteria in paragraph 25(3) of Schedule 4 to the Act, we have no grounds for refusing the application made in whole or part and are therefore granting the application.

² All notaries must complete a 2 year period under supervision by an appropriately qualified public notary (i.e. holds a practising certificate and in practise for a minimum of 5 years). This is considered an appropriate period for those newly admitted public notaries whose practice is solely in the reserved legal activity of notarial activities only. The changes are therefore in addition to (or may run concurrently) with the current 2 year supervision requirement.

12. Annex 1 contains the amended Notaries (Post Admission) Rules 2009, as approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the MoF on 5 December 2011.
- The 28 day initial decision period for considering the application ended on 1 January 2012.
- The Decision Period was extended to 2 March 2012 on 21 December 2012 to allow the LSB to conclude any issues identified during the assessment of the application.
- This Decision Notice is being published on our website on 30 January 2012.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board

30 January 2012

NOTARIES (POST-ADMISSION) RULES 2009

We, SHEILA MORAG CLARK CAMERON One of Her Majesty's Counsel, Commissary or Master of the Faculties of the Most Reverend Father in God Rowan Douglas by Divine Providence Lord Archbishop of Canterbury Primate of All England and Metropolitan in exercise of the powers conferred by section 57 of the Courts and Legal Services Act 1990 and of all other powers Us enabling hereby make the following rules:

Citation and Commencement

1. These rules may be cited as the Notaries (Post-Admission) Rules 2009, and shall come into force on the 20th day of March 2009.

1A. Paragraphs 3A, 3B, 3C, 3D and 3E of Rule 3 and paragraphs 1A, 1B, 1C 1D and 1DE of Rule 4 and paragraphs 2(c) and 3(c) of Rule 5 shall come into force on the [] day of [] 20142.

Interpretation

2. In these Rules

'1991 Rules' means the Notaries (Post-Admission) Rules 1991 as amended by the Notaries (Qualification) Rules 1998;

'The Faculty Office' means the Registry of the Court of Faculties;

'The Master' means the Master of the Faculties;

'The Registrar' means the Registrar of the Court of Faculties.

Period of practice under supervision

3. (1) This Rule shall apply to all notaries admitted to practise in England and Wales (other than notaries for ecclesiastical purposes only) on or after 13th day of June 1990
- (2) A notary to whom this Rule applies shall be required to complete a period of practice under supervision in accordance with these Rules which shall commence
 - (a) in the case of a notary admitted after the date on which this Rule comes into effect, or of a notary admitted before that date but not in practice on that date, on the date on which he commences or resumes practice as a notary; or
 - (b) in any other case, as soon as arrangements for supervision can practicably be made, but not in any event later than two months after this Rule comes into effect.
- (3) Subject to paragraph (4) of this Rule, the duration of the period of practice under supervision shall be two years, less either of the following:
 - (a) any period of apprenticeship served pursuant to section 2 of the Public Notaries Act 1801 or pursuant to requirements of the Incorporated Company of Scriveners of London imposed under Section 57(11)(b) of the Courts and Legal Services Act 1990;

- (b) any period spent in actual practice as a notary, prior to the coming into effect of these Rules, by a district notary appointed pursuant to the Public Notaries Act 1833.

(3A) A notary admitted to practise after [2011] who carries out conveyancing in his capacity as a notary shall be required to complete a period of practice under supervision of three years commencing no later than the first date that instructions for conveyancing are accepted by the notary in his capacity as a notary.

(3B) A notary admitted to practise after [2011] who carries out probate in his capacity as a notary shall be required to complete a period of practice under supervision of three years commencing no later than the first date that instructions for probate are accepted by the notary in his capacity as a notary.

(3C) Paragraph 3A of this Rule shall not apply to a notary who is a member of a professional partnership as defined in Rule 2 of the Notaries Practice Rules 2009 or who is an employee of that partnership where at least one other member of that professional practice also carries out conveyancing whether as a notary or by otherwise being entitled.

(3D) Paragraph 3B of this Rule shall not apply to a notary who is a member of a professional partnership as defined in Rule 2 of the Notaries Practice Rules 2009 or who is an employee of that partnership where at least one other member of that professional practice also carries out probate whether as a notary or by otherwise being entitled.

(3E) If a notary has already completed a period of supervision under this Rule but that supervision did not comply with Rules 3A-3D (additional supervision for notaries carrying out conveyancing and probate) and wishes to accept instructions to carry out conveyancing or probate in his capacity as a notary he shall apply to the Master to set a period of supervision of three years or less relating solely to conveyancing or probate or both.

- (4) The Master may direct that the period of practice under supervision be extended in any particular case, either
- (a) as a condition of approving a change of supervisor under paragraph (5) of Rule 4, or
 - (b) following his consideration of a report submitted pursuant to paragraph (3) of Rule 7, or
 - (c) following disciplinary proceedings.

Selection of supervisor

4. (1) During the period of practice under supervision the notary to whom this Rule applies ("the supervised notary") shall practise as a notary only under the supervision (as defined in Rule 5) of another notary ("the supervisor") who holds a current practising certificate entered in or issued from the Court of Faculties, and who has been engaged in actual practice as a notary for a minimum period of five years from the date of admission as a notary.

(1A) A notary acting as a supervisor for a notary to which paragraph 3A of Rule 3 applies shall have carried out conveyancing as a substantial part of his practice for the previous five years whether as a notary or by otherwise being entitled.

(1B) A notary acting as a supervisor for a notary to which paragraph 3B of Rule 3 applies shall have carried out probate as a substantial part of his practice for the previous five years whether as a notary or by otherwise being entitled.

(1C) For the purposes of paragraphs 1A and 1B of this Rule a notary may have more than one supervisor.

(1D) A notary requiring supervision to whom either or both paragraphs 3A and 3B of Rule 3 applies may obtain supervision from a solicitor or an appropriately authorised licensed conveyancer who has been in practice as such for a minimum period of five years.

(1E) If for the purposes of paragraphs 1A and 1B of this Rule a notary has more than one supervisor each of those supervisors shall carry out the full extent of supervision required by these rules save that an additional supervisor may restrict his supervision to supervising the conveyancing or probate practice of the notary (or both) for which reason he has been appointed.

(2) A notary (or solicitor or licensed conveyancer where paragraph 1D of this Rule applies) acting as a supervisor shall be located within a reasonable distance from the office at which the supervised notary proposes to practice so as to enable the supervisor to visit that office from time to time as required by Rule 5(2).

(3) It shall be the duty of a supervised notary to notify the Faculty Office upon request of the name and address of his supervisor; and it shall be the duty of any notary to notify the Faculty Office upon request of the names and addresses of all notaries of whom he is the supervisor.

(4) A supervised notary shall, upon the death or retirement from practice of his supervisor, forthwith make arrangements for another notary qualified under this Rule to supervise his practice for the remainder of the required period; and any time between the death or retirement of the former supervisor and the coming into effect of such arrangements shall not count towards the period of supervised practice.

(5) If for any reason other than the death or retirement of the supervisor, either party wishes the appointment of a particular supervisor to be terminated before the expiry of the required period of supervised practice, application shall be made for that purpose to the Master, who may terminate the supervision upon such conditions as he shall think fit.

Extent of supervision

5. (1) The following aspects of a notary's practice shall be excluded from the general requirement of supervision (but not from the obligation to produce records and accounts under paragraph (2) of this Rule):

- (a) conveyancing and probate, in the case of a notary who is also a solicitor and who would be entitled to carry out conveyancing and probate as a solicitor without supervision, or who does in fact receive such supervision in relation to his practice as a solicitor as is required by the Solicitors Act 1974 and rules made thereunder;
- (b) conveyancing, in the case of a notary who is also a licensed conveyancer and who would be entitled to carry out conveyancing as such without supervision, or who does in fact receive such supervision in relation to his practice as a licensed conveyancer as is required by the statutes and rules governing that profession.

(2) The supervisor shall visit the office of the supervised notary

- (a) within one month after the supervised notary has been admitted as a notary and has been issued with a practising certificate from the Court of Faculties, and
- (b) for a second time within twelve months from the date of the visit under subparagraph (a) of this Rule, and
- (c) in respect of a supervised notary to whom rule 3(A) and/or Rule 3(B) applies for a third time within twelve months from the date of the visit under sub paragraph (b) of this Rule

and shall on each visit inspect the records and accounts of the supervised notary which~~ch~~the supervised notary shall (subject to paragraph (4) of this Rule) produce to the supervisor on request.

(3) The supervised notary shall visit the office of the supervisor

- (a) no later than six months after the supervisor's visit required by paragraph (2)(a) of this Rule, and

(b) ~~(b)~~ for a second time no later than six months after the supervisor's visit required by paragraph (2)(b) of this Rule, and

(~~b~~)~~(c)~~ in respect of a supervised notary to whom rule 3(A) and/or Rule 3(B) applies for a third time no later than six months after the supervisor's visit required by paragraph (2)(c) of this Rule,

and shall (subject to paragraph (4) of this Rule) produce to the supervisor for inspection the records and accounts of the supervised notary relating to the period since the supervisor's last visit to the supervised notary's office.

(4) If it appears to a supervised notary that papers relating to the business of a particular client cannot be shown to his supervisor without causing a breach of the duty of confidentiality owed to that client (whether on account of a relationship between the client and the supervisor, or because the supervisor is known to act for a person in competition with the client, or for any other reason), he shall inform the supervisor of that fact. The supervisor may nominate another notary (qualified to be a supervisor under Rule 4(1) but not subject to the same objections of confidentiality as respects the client concerned) and the notary nominated shall, if willing to act, have the supervisor's rights and duties in relation to those papers.

(5) The supervisor shall make himself available at all reasonable times to offer advice and guidance to the supervised notary on matters covered by the supervision and shall make enquiries of the supervised notary at least once in every three months period by e-mail or other means of communication as to the notary's progress and any matter of concern to the supervised notary, and the supervised notary shall within one week of receipt of the supervisor's communication provide the supervisor by e-mail or other means of communication a short report about the notary's progress and shall include any request for advice and guidance as necessary, and both the supervisor and the supervised notary shall keep a record of these communications.

(6) The supervisor shall take particular care to ensure (so far as he is able) that the supervised notary is aware of, and complies with, all Rules and Orders made by the Master under section 57 of the Courts and Legal Services Act 1990, and conducts himself in a manner calculated to maintain the reputation of the office and profession of a public notary.

Post-Admission Education

6. Every supervised notary shall, during each year of his period of practice under supervision, attend
 - (a) one full day course or seminar approved by the Master covering the topics of Bills of Exchange, Notarial Practice and Professional Conduct;
 - (b) if desiring to carry out conveyancing as part of his notarial practice, one full day continuing education course or seminar in conveyancing approved by the Master; and
 - (c) if desiring to carry out probate work as part of his notarial practice, one full day continuing education course or seminar in probate approved by the Master;and shall make a report to his Supervisor on the course or seminar attended.

Records and reporting

7. (1) A report of every visit and inspection made pursuant to paragraphs (2) and (3) of Rule 5 shall be made by the supervisor, and shall be inserted in the Register or other permanent record kept by each notary pursuant to the Notaries (Records) Rules 1991.
 - (2) The supervisor shall enter in the Register or other permanent record kept by him pursuant to the Notaries (Records) Rules 1991 a note of any advice or guidance given to a supervised notary pursuant to paragraph (4) of Rule 5.
 - (3) Upon the completion of a period of practice under supervision (or upon the retirement from practice of a supervisor during such a period), the supervisor shall report the fact of such completion to the Master in writing and shall indicate the courses or seminars attended by the supervised notary pursuant to Rule 6, and whether in his opinion the supervised notary shall thereafter be permitted to practise without supervision. The supervisor and the supervised notary shall respond in writing to any questions put by the Master in relation to the period of supervision, and produce to the Faculty Office such documents as the Master may require.

Fees

8. A notary agreeing to act as a supervisor shall be entitled to charge the supervised notary a fee not exceeding the level prescribed from time to time in Regulations made by the Master (which may include provision for expenses), together with the amount of any Value Added Tax due thereon. If for any reason the appointment of the supervisor ceases before the end of the period of supervision, the fee shall be apportioned pro rata or as the Master may direct.

Dispensations

9. The Master may, upon such application made to him as he deems sufficient, for good cause dispense any notary from the requirement of supervision under these Rules or permit such lesser supervision as he considers practicable in the circumstances of any particular case.
10. The provisions of these Rules shall not apply to any Notary who, immediately prior to his admission, was recognised by the Master as qualified for admission under the provision of Rule 9 of the Notaries (Qualification) Rules 1998.

Revocation and Savings

11. (1) Subject to Rule 11(2) the 1991 Rules are hereby revoked.
11. (2) Where a notary has commenced a period of practice under supervision prior to the coming into force of these Rules the 1991 Rules, as amended, shall continue to have effect in respect of that period of practice under supervision.

DATED this Twentieth day of March 2009.

SHEILA CAMERON

MASTER