



Legal Services Board – decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Master of the Faculties application for approval of alterations to the regulatory arrangements relating to Notaries (Qualification) Rules 2013

The Legal Services Board (LSB) has granted an application from the Master of the Faculties for approval of the Notaries (Qualification) Rules 2013.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Master of the Faculties is an approved regulator.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² 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) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or

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.

² Rules for Rule Change Applications – Version 2 (November 2010)

otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

Background

5. Qualification as a notary is regulated by the Faculty Office of the Archbishop of Canterbury under the direction of the Master of the Faculties.

Proposed changes

6. The proposed change is to create new Notaries (Qualifications) Rules 2013 to replace the existing Notaries (Qualifications) Rules 1998. The changes are to:
 - clarify the requirements for Public Notaries qualified in the European Economic Area (EEA) plus Scotland and Northern Ireland;
 - introduce a requirement for newly qualified notaries to start their practice and supervision period within two years of completing their professional training; and
 - bring in a new Office Practice Course to provide newly academically qualified Public Notaries with a practical course covering the day to day matters they will be dealing with and ensuring familiarity with the Notarial Practice Rules 2009 prior to their admission to the Roll of practising notaries.
7. The Master of the Faculties states in the application that the changes are to provide better protection for the consumer of notarial services by enhancing the training received by new entrants from England and Wales and ensuring that those who have been practising in the EEA and in Scotland and Northern Ireland are adequately prepared to practise here.

Assessment of the application

8. The Master of the Faculties provided to the LSB the legal advice it had obtained to satisfy themselves that the proposed changes to the Notaries (Qualifications) Rules 2013 were consistent with the requirements of EC Directive 2005/36/EC. The LSB reviewed how the advice had been applied to the rule changes.
9. During its consideration of the application, the LSB sought clarification from the Master of the Faculties regarding the proposed minimum age requirement for practising notaries and specifically how it had considered this in light of the relevant provisions in the Equality Act 2010. In response, the Master of the Faculties confirmed it is satisfied that the minimum age requirement is proportionate and is capable of being objectively justified.
10. The LSB also asked the Master of the Faculties to consider whether the requirement to take an oath of allegiance is a restriction on the right of a non-UK national to practise as a notary in England and Wales. The Master of the Faculties confirmed that this had

been considered and a decision made that the requirement to take the oath is not unreasonable. This was based on the fact that to remove the requirement would require a change to primary legislation and given there has been no evidence of any issues with the requirement to date with a number of non-English and Welsh nationals practising as notaries, to amend the primary legislation would be disproportionate.

Decision

11. The LSB has considered the Master of the Faculties' application against the criteria in paragraph 25(3) of Schedule 4 to the Act, and considers that there is no reason to refuse this application; accordingly, the LSB grants this application.
12. The Annex to this Decision Notice contains the Notaries (Qualification) Rules 2013 approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the Master of the Faculties on 1 October 2013.
- On 23 October 2013, the LSB extended the initial decision period to 29 December 2013.
- This Decision Notice is effective from 6 November 2013.
- The Decision Notice will be published on the LSB's website on 7 November 2013.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
6 November 2013

Annex

NOTARIES (QUALIFICATION) RULES 2013

Part I: Preliminary

1 Citation and Commencement

1.1 These rules may be cited as the Notaries (Qualification) Rules 2013.

1.2 These rules shall come into force on the day of 2013

2 Interpretation

In these rules:

'the Board' means the Qualifications Board established under rule 6;

'the Company' means the Incorporated Company of Scriveners of London;

'Degree' means a qualification awarded following a post secondary course of at least three years' duration (or of an equivalent duration part time) at a university or an establishment of higher education or an establishment of similar level;

'the Directive' means the Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 as amended from time to time;

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

'the Master' means the Master of the Faculties;

'the Notarial Practice Course' means a course approved from time to time by the Master comprising the prescribed subjects set out in paragraphs 9, 10 and 11 of schedule 2;

'the Office Practice Course' means a course approved from time to time by the Master comprising the matters set out in schedule 5; and

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

Part II: General Provisions as to Admission

3 *Qualification for Admission as a Notary Public*

No person shall be admitted as a notary public to practise in England and Wales unless such person:

- 3.1 Is at least 21 years of age and has satisfied the requirements of these rules;
- 3.2 Has taken the oath of allegiance and the oath required by Section 7 of the Public Notaries Act 1843; and
- 3.3 Is, except where such application is made under rule 4 (ecclesiastical notaries) or rule 8 (European Economic Area notaries) either a solicitor of the Senior Courts of England and Wales, or a barrister at law or holds a Degree.

4 *Ecclesiastical Notaries*

Any person appointed as registrar of either of the provinces of Canterbury or York, as registrar to the Archbishop of Wales, as legal adviser to the General Synod to the Church of

England, as legal secretary to the Governing Body of the Church in Wales, as registrar of any diocese in England or Wales, as an officer of the ecclesiastical court in Jersey or Guernsey, or as the deputy to any such officer, may apply for admission as a notary public for ecclesiastical purposes only, upon satisfying the Master of the fact of such an appointment.

5 *General Notaries*

Any person who satisfies the requirements of rule 3 and who has obtained the qualifications required under Part III of these rules may apply for admission as a general notary to practise in England and Wales.

Part III: Qualifications

6 *Qualifications Board and Fees for Applications*

6.1 There shall be established a Qualifications Board constituted in accordance with schedule 1.

6.2 The functions of the Board shall be:

6.2.1 To advise the Master whether a degree or other qualification should be approved by him for the purpose of these rules.

6.2.2 To advise the Master on the standard of the qualifications of any person applying for admission as a general notary under these rules.

6.2.3 To advise the Master on the qualifications and experience of persons applying for recognition that they are eligible for admission as a general notary under rule 8.

- 6.2.4 To advise any other body concerned with the administration or regulation of the notarial profession in England and Wales or any part of it on matters relating to qualifications and experience.
- 6.3 The Master may by Order delegate to the Board any of his functions under these rules relating to the approval or recognition of degrees, qualifications and experience.
- 6.4 The Master may from time to time by Order prescribe fees or the maximum fees which may be charged in respect of any application to the Master under these rules and such fees may be applied by the Faculty Office towards meeting the expenses of the Board but subject thereto the expenses of the Board and of its members shall be paid from and such fees shall form part of the general notarial income of the Faculty Office.

7 *Practical Qualifications*

- 7.1 Any person wishing to be admitted as a general notary under rule 5 shall have undertaken and attained a satisfactory standard in a course or courses of studies covering all of the subjects listed in schedule 2.
- 7.2 Whether a particular course of studies satisfies the requirements of these rules and whether a person has obtained a satisfactory standard in that course shall be determined by the Master after seeking the advice of the Board.
- 7.3 The Master after seeking the advice of the Board may by Order direct that the award of a particular qualification meets the requirements of these rules as to some or all of the subjects listed in schedule 2.
- 7.4 The Master may as a condition of making a direction under rule 7.3 require the body by which the qualification is awarded to issue those pursuing a course of studies leading to that qualification with such information about the notarial profession, these rules and other rules made by the Master and the Company as the Master may specify.

- 7.5 The Master may by Order add any subjects to the list in schedule 2 or remove any subjects from that list or alter any of the provisions of that schedule but before doing so he shall consult the Board.

8 *Notaries of the European Economic Area*

- 8.1 This rule applies to a person who:

(a) holds the office of notary public in a member state of the European Economic Area other than the United Kingdom, or

(b) holds all the qualifications and has completed all the practical training necessary for appointment or admission to that office in such a member state but has not yet been so appointed or admitted.

- 8.2 Any person to whom this rule applies may apply to the Master for recognition that he is qualified for the purposes of rule 10.1 for admission as a general notary to practise anywhere in England and Wales and such application shall be made to the Faculty Office in such form and accompanied by such information as the Master may from time to time by Order prescribe.

8.3

- 8.3.1 Any person applying to the Master for recognition under this rule shall satisfy the Master, in consultation with the Board, that:

(a) he can demonstrate a knowledge sufficient for a notary to practise in England and Wales in those subjects contained in schedules 3 and 4 either through examinations set by such institution or body recognised by the Board for the purpose taken within the last 5 years in those subjects, or from the applicant's own practical experience of the areas of law covered by those subjects; and

- (b) he can demonstrate a competence in Notarial Practice with respect to the practice of a notary in England and Wales, and in particular the matters listed in paragraph 11 of schedule 2.

8.3.2 Where an applicant is unable to demonstrate the requisite knowledge or experience set out in 8.3.1 above, he may be required:

- (a) to take an aptitude test by way of an examination or examinations in such form and set by an institution or body recognised by the Board as may be prescribed from time to time by the Master; or
- (b) undertake a period of supervision under a qualified and admitted notary for such period as may be specified by the Master not exceeding 3 years and such period may include a requirement to undertake further training and assessment.

8.4 The Master shall after consultation with the Board examine any application made under this rule in accordance with the procedures set out in articles 13 and 14 of the Directive.

8.5 Where an application is made to the Master under rule 8.2 he shall determine the application as soon as possible and communicate the outcome to the applicant in a reasoned decision within four months of the production of all the certificates and documents relating to the applicant referred to in article 3 of the Directive.

8.6 If the Master refuses an application under rule 8.2 or has not determined the application within the time prescribed by rule 8.5 the Master shall be deemed to have refused an application for a faculty and the applicant may pursue the remedy provided for in the Ecclesiastical Licences Act 1533 and mentioned in section 5 of the Public Notaries Act 1843.

- 9.1 This rule applies to a person who holds the office of notary public in Scotland or Northern Ireland.
- 9.2 A person to whom this rule applies wishing to be admitted as a general notary for England and Wales shall have satisfied the requirements of rule 7 with such exemptions in any particular instance as the Master shall determine after seeking the advice of the Board.

Part IV: Procedure for Admission

10 *Application for Admission*

- 10.1 A person qualified for admission as a notary under these rules shall apply in writing to the Faculty Office on such form as the Master may from time to time specify.
- 10.2 The application shall be accompanied by:
- (a) A certificate of fitness in such form as the Master may from time to time prescribe to be given by a notary public to the effect that the applicant is known to him and that having made due enquiry to the best of his knowledge and belief the applicant is a fit and proper person to be created a notary public; and
 - (b) A certificate of good character in such form as the Master may from time to time prescribe to be given by a person who is qualified under paragraph 10.3 testifying to the good character, honesty, reliability, diligence and trustworthiness of the applicant and stating that the person giving the certificate knows of no reason why the applicant should not be created a notary public;
 - (c) Evidence that the applicant has successfully completed the Notarial Practice Course within a period not exceeding two years prior to the date of the application provided that this requirement shall not apply to an applicant

under rule 8.2 who has demonstrated to the satisfaction of the Master his knowledge and competence in accordance with rule 8.3, the application to be accompanied by evidence that such demonstration was within the same period.

- 10.3 A person is qualified to give the certificate of good character required by paragraph 10.2(b) of this rule if he is a person of good standing and character, he has known the applicant for a period of not less than five years, he is not related to the applicant by blood, marriage or adoption, and he is not a professional partner, employer or employee of the applicant.
- 10.4 In the case of a person qualified under rule 4 the certificate of fitness shall further state that the applicant is conformable to the doctrine and discipline of the Church of England as by law established (or, in the case of a person qualified only by reason of holding an ecclesiastical appointment in Wales, the doctrine, discipline and constitution of the Church in Wales).
- 10.5 The certificate of fitness and the certificate of good character may be given in the case of a person qualified under rule 8 by suitably qualified persons in the applicant's Home state and in the case of a person qualified under rule 9 by suitably qualified persons in Scotland or Northern Ireland as appropriate.
- 10.6 The application shall be accompanied by such fee as the Master may from time to time prescribe.

11 *Publicity, Refusal of Applications and Admissions*

- 11.1 The Master may give, or require an applicant to give, such publicity to an application made under rule 10 as in the circumstances appear to the Master to be necessary.
- 11.2 Any representations made to the Master following such publicity shall be notified to the applicant, and the Master shall consider any response thereto made by the applicant before deciding whether a faculty shall be granted.

- 11.3 Any decision by the Master to refuse an application under rule 10 shall be notified to the applicant by the Registrar in writing to enable the applicant to pursue (if so advised) the remedy provided for in The Ecclesiastical Licences Act 1533 and mentioned in Section 5 of the Public Notaries Act 1843.
- 11.4 Upon the Master deciding to grant an application under rule 10, the Registrar shall cause a faculty to pass the seal in accustomed form. The applicant shall appear personally before the Registrar to make the oaths mentioned in rule 3.2 and the Registrar shall then admit him by delivering the faculty to him and causing his name to be entered upon the roll of notaries. The Master may appoint a Commissioner to act in place of the Registrar for this purpose.
- 11.5 Before admitting the applicant in accordance with rule 11.4 the Registrar shall be satisfied that the applicant has successfully completed the Office Practice Course.

Part V: Repeals and Savings

12 *The following Rules are hereby revoked:*

- 12.1 The Notaries (Qualification) Rules 1998
- 12.2 The Notaries (Qualification) (Amendment) Rules 2008
- 12.3 Rule 10 of the Notaries (Access to Justice Act) (Consequential Provisions) Rules 1999

13 Subject to any further Order of the Master, the certificates of fitness and of good character prescribed by the Master's Orders of 27th August 1992 and 13th September 1993 respectively shall be the certificates prescribed for the purposes of rule 10.2. (a) and (b) of these rules .

SCHEDULE 1

QUALIFICATIONS BOARD

- 1 The Board shall comprise not more than 10 persons appointed by the Master after consultation with the Company, the Society of Scrivener Notaries and the Notaries Society and such other persons or bodies as the Master may consider appropriate.
- 2 The Master shall appoint one member of the Board to be Chairman for such period as the Master may determine.
- 3 Members of the Board, including the Chairman, shall hold office for such period as the Master may determine and may be removed from office by the Master at any time.
- 4 The Registrar shall act as Clerk to the Board or may appoint or nominate another person to act as Clerk in his place.
- 5 The Board shall meet as often as may be necessary and in any event not less than once each year.
- 6 The Board may delegate any of its functions under these rules to a subcommittee comprising not fewer than three of its members.

SCHEDULE 2

PRESCRIBED SUBJECTS

1. Public & Constitutional Law

- The nature and sources of constitutional law
- Conventions
- The sovereignty of parliament
- Introduction to the objectives and structure of the European Union
- Human Rights and Freedom of Expression
- Administrative Law

2. The Law of Property

- The definition of “land” and the distinction between real and personal property
- The nature of legal and equitable interests
- Registered and unregistered land
- Estates and interests in land: freehold, leases, mortgages, easements, covenants relating to land, licences
- Principles relating to the transfer of legal estates and interest in land, and contracts enforceable in equity
- Trusts of land, joint tenancies and tenancies in common

3. The Law of Contract

- Formation of a contract: offer, acceptance, consideration, intention to create legal relations
- Contents of a contract: express and implied terms
- Exemption clauses and unfair terms
- Vitiating factors: duress, undue influence, non-disclosure, misrepresentation, mistake
- Discharge of contracts: performance, agreement, breach, frustration
- Remedies: damages, specific performance, injunction

4. The Law of the European Union

- Evolution of the European Union
- The institutions of the European Union
- The law making process
- Sources and hierarchy of law in the European Union
- The supremacy of European Union law
- Overview of the substantive law of the European Union

5. Equity and the Law of Trusts

- Equity and equitable principles
- Formation of trusts: the three certainties; the beneficiary principle
- Formal requirements to create a trust
- Legality of a trust: perpetuities and accumulations
- Completely and incompletely constituted trusts
- Implied, resulting and constructive trusts
- Trusts of land
- Charitable trusts
- Appointment, retirement and removal of trustees
- Trustees' powers and duties
- Rights of beneficiaries under a trust
- Variation of trusts
- Remedies for breach of trust

6. Conveyancing

- Land registration and third-party rights
- Conflicts of interest, undertakings and professional negligence
- Contract: formation and enforceability
- Deducing and investigating title
- Pre-contract searches and enquiries
- Mortgages
- Planning considerations
- Exchange of contracts
- Pre-completion searches steps, completion and post-completion

- Investigation of Title - registered and unregistered
- Delayed completion and remedies
- Leasehold properties
- Commonhold

7. The Law and Practice of Companies and Partnerships

- Company formation
- Articles of association
- Shares and debentures
- The members of a company, including rights of minority shareholders
- Company directors and other officers
- Administration
- Winding up
- Formation of partnerships
- Relationship between partners, including partners as agents
- Dissolution
- Limited Liability Partnerships

8. Wills Probate and Administration

- The nature and validity of wills
- Intestacy
- Planning and drafting a will
- Construction of wills
- Taxation and accounts for taxation purposes
- Applying for the grant
- Family provision claims
- Duties and powers of personal representatives
- Completion of the administration
- Beneficiaries' rights and remedies

9. Roman Law as an Introduction to Civil-Law Systems

- The different areas of law: property, obligations, family, agency, succession
- The use of written instruments in Roman practice - the *tabellio* and the *notarius*
- The reception of Roman law in medieval Europe and its continuing relevance to modern civil-law jurisdictions
- The civil-law courts in England
- The role of Roman law in the development of the English common law
- The development of the modern European notariat

10. Private International Law

- The structure and elements of private international law

- EU and common law rules on jurisdiction
- Recognition and enforcement of judgments under EU law and the common law
- Authentic instruments
- Arbitration and alternative dispute resolution
- Choice of law rules: contractual and non-contractual obligations, moveable and immoveable property, insolvency, marriages and civil partnerships, and succession
- The meaning and use of nationality, domicile and habitual residence as connecting factors
- Characterisation and the distinction between rules of substance and rules of procedure
- The role of public policy and mandatory rules
- The pleading and proof of foreign law

11. Notarial Practice

- The legislation and rules governing notarial practice
- Personal identity and capacity
- Corporate identity and capacity
- The law of agency and powers of attorney
- Execution of documents and deeds by individuals and bodies corporate
- Forms of notarial act
- Affidavits and statutory declarations
- The noting and protest of bills of exchange
- Document security and record-keeping
- Apostilles and consular legalisation
- The regulation of notarial services
- Appointment, supervision, and continuing professional education
- Professional standards and the Conduct and Discipline Rules

SCHEDULE 3

PRESCRIBED SUBJECTS (Rule 8.3)

(details of subjects as in Schedule 2 above)

1. Public/Constitutional Law

2. The Law of Property
3. The Law of Contract
4. The Law of the European Union
5. Equity and the Law of Trusts
6. Conveyancing
7. The Law and Practice of Companies and Partnerships
8. Wills, Probate & Administration

SCHEDULE 4

PRESCRIBED SUBJECTS (Rule 8.3)

(details of subjects as in Schedule 2 above)

PART 1

- A. Roman Law as introduction to Civil Law systems
- B. Private International Law

PART 2

Notarial Practice (including Bills of Exchange)

In Part 1 of this Schedule, the applicant may be required either to have passed an examination in these subjects, or to have undertaken supervised practice in these subjects under a qualified and admitted notary or otherwise satisfied the Master of his proficiency by practice as a notary in another member state.

In Part 2, the applicant shall have satisfied the Master either by examination or by supervised practice under a qualified and admitted notary in these areas.

SCHEDULE 5

OFFICE PRACTICE COURSE

- The practical aspects of preparing notarial acts, including the function of a newly qualified notary's supervisor and the use of other resources
- The application in practice of the Notaries Practice Rules
- Consular legalisation and apostilles
- Record-keeping, with particular reference to notarial acts in the public form, and accounts
- Client care and handling complaints
- The Conduct and Discipline Rules