

FACULTY OFFICE

APPLICATION TO LEGAL SERVICES BOARD FOR AN ALTERATION TO  
REGULATORY ARRANGEMENTS

Notaries (Continuing Professional Education) Regulations 2010

On behalf of the Master of the Faculties I am making the above application under Part 3 of Schedule 4 of the Legal Services Act 2007 ('LSA 2007') and the rules made by the Legal Services Board under that part. This application should be read in conjunction with the Regulations (Annex 1) and the Question and Answer guidance (Annex 2).

Reason for the proposed alteration in regulatory arrangements

The Continuing Professional Education ('CPE') Regulations impose a requirement that notaries complete a specified amount of CPE relevant to their practice during the course of each practising year. The CPE requirement is designed to ensure that notaries keep up with the changes in the law and best professional practice. Many notaries already undertake CPE activities. The Regulations will make this compulsory.

Compliance with the regulatory objectives

Section of the LSA 2007 requires approved regulators to comply with the following objectives:-

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services;
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

In light of the regulatory objectives I have the following comments:-

(a) protecting and promoting the public interest

The CPE Regulations are designed to ensure that notaries keep up with changes in the law and best professional practice. In so doing the notary is better able to satisfy the duty of care he/she has to all those who place legitimate reliance on his/her notarial acts by applying the law correctly, expertly and effectively.

(b) supporting the constitutional principle of the rule of law

The CPE Regulations have been made to help ensure that notaries apply the law correctly, expertly and effectively by requiring them to undertake regular training in the area of law in which they practise. Notaries' knowledge of the law should be consolidated and increased because of the requirement to complete CPE on a regular basis.

(c) improving access to justice

The CPE Regulations will have a neutral effect on the public access to notaries. Although notaries will have to allow for the expenditure in time and money incurred on attending professional courses, it is not expected that the burden will be so significant as to discourage notaries from renewing their practising certificates, save perhaps a small number who are in semi-retirement and rarely practice, and therefore a contraction in the provision of notarial services is not anticipated.

(d) protecting and promoting the interests of consumers

The CPE Regulations are designed to improve the standard of service that a notary is able to provide to consumers and others by virtue of his/her knowledge of the law. As above it is not expected that the additional burden imposed on the notary through the requirement to complete CPE will add significantly to the cost to the consumer of notarial services.

(e) promoting competition in the provision of services

It is expected that the CPE Regulations will have a neutral effect on the competition between legal professionals. The CPE requirement will be imposed on all notaries (except the newly qualified). It reflects requirements made on solicitors and other legal professionals to complete CPE.

(f) encouraging an independent, strong, diverse and effective legal profession

The requirement to complete CPE should give confidence to notaries that they are practising in accordance with the law and best practice. It also has the indirect consequence of causing notaries to meet together which might help foster a greater professional identity and allow notaries to discuss issues which are important to them with other members of their profession. It is not expected that the CPE regulations will have an effect on the diversity of the profession.

(g) increasing public understanding of the citizen's legal rights and duties

CPE will, in part, inform notaries about citizens' legal rights and duties and train the notary in facilitating and recognising the rights and duties of citizens under the law.

(h) promoting and maintaining adherence to the professional principles

The 'professional principles' are:-

- (a) that authorised persons should act with independence and integrity,
- (b) that authorised persons should maintain proper standards of work,
- (c) that authorised persons should act in the best interests of their clients,
- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice,
- (e) that the affairs of clients should be kept confidential.

The rationale behind the CPE requirement is to promote and maintain those professional principles which are contained in rules made by the Master of the Faculties, in the general law, and which notaries ought to follow because of their membership of an ancient and distinguished profession. CPE activities may include education about professional conduct.

#### Compliance of the Regulations with the Better Regulation Principles

Section 28 of the Act imposes a duty on an approved regulator, so far as is reasonably practicable, to act in a way—

- (a) which is compatible with the regulatory objectives, and
- (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.

The approved regulator must have regard to—

- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
- (b) any other principle appearing to it to represent the best regulatory practice.

I have explained how the CPE Regulations comply with the regulatory objectives.

The CPE Regulations arise out of an extended consultation with the two representative societies and were scrutinised by the Master's Advisory Board which contains representatives of those societies. Those societies are cooperating to arrange accredited CPE courses for notaries.

It is my opinion that it is desirable to make CPE a requirement by the way of regulations rather than merely issue guidance to notaries. Otherwise there is the risk that some notaries simply will not undertake CPE. Notaries are required to keep a record of their CPE and send this to the Faculty Office with their application for the next year's practising certificate, and the Faculty Office is able to make spot-checks on a notary's record. The Regulations are enforced by Rule 19 of the Practice Rules 2009. We intend to make any breach of the Practice Rules a disciplinary offence (this is subject to a future rule-change application). There will be an increase in Faculty Office time to meet this supervisory capacity which is considered necessary to achieve the objectives of CPE.

The CPE Regulations appear on the Faculty Office website. Guidance notes have been issued in the form of a question and answer document also available to view on the Faculty Office website. The Master has decided that 3 hours CPE on accredited courses, and 3 hours otherwise than on accredited courses in each area in which the

notary practices, is a realistic minimum demand to make on a notary's time. The Master or myself approve all accredited courses to ensure that the course content meets the objectives of CPE. The Master has a power of waiver to deal with cases where a notary has not, through any fault of his/her own, been able to comply with the requirements.

How will the Faculty Office determine whether the Regulations have been successful in meeting their objectives?

The maintenance and improvement in professional standards can be judged indirectly through the number and type of complaints received against notaries. These complaints will be monitored under our complaints handling procedures.

I shall invite the representative societies to provide feedback on how the CPE system is working, especially through discussions at the Master's Advisory Board and the Notarial Open Forum which takes place annually and at which a wide selection of notaries are invited to meet the Master.

Impact on other approved regulators

Most other authorised regulators already require their authorised persons to undertake some form of CPE. When drawing up the CPE Regulations the Faculty Office examined the rules governing solicitors and barristers. Those notaries who are also regulated by other approved regulators have the option of applying for courses which they attend for the purpose of CPE for solicitors and other professionals to be accredited for the purpose of these Regulations as well, or may otherwise rely upon such activities for the non-accredited CPE component. The CPE industry of educational providers already provide teaching in probate and conveyancing and it is expected that notaries who need CPE in those areas will seek to use pre-existing providers. The CPE Regulations have no expected adverse effects on other approved regulators and it is not anticipated that they will give rise to regulatory conflict. If anything, the reverse is true, and the CPE Regulations bring notaries in line with requirements made on other legal professionals.

Timetable

The CPE Regulations are intended to commence with immediate effect. The first CPE period commences on 1st November 2010 although notaries may obtain CPE credit points and the Master may accredit CPE activities before that time.

P F B BEESLEY, ESQ.  
Registrar, Faculty Office

1, The Sanctuary, Westminster, London, SW1P 3JT  
020 7222 5381  
(named contact – I S Blaney, Esq.)

[faculty.office@1thesanctuary.com](mailto:faculty.office@1thesanctuary.com)  
[www.facultyoffice.org.uk](http://www.facultyoffice.org.uk)

17th August 2010