



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 Regulatory Arrangements in respect of the Notaries (Continuing Professional Education) Regulations 2010

Introduction

1. The Legal Services Board (“LSB”) is required by Part 3 of Schedule 4 of the Legal Services Act 2007 (“the Act”) to review and approve or reject alterations to the Regulatory Arrangements of the Approved Regulators. The Master of the Faculties is an Approved Regulator whose regulatory functions are carried out through the Faculty Office (“**Faculty Office**”).
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change 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. These procedures include 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. We confirmed receipt of an application from the Faculty Office (sent on behalf of the Master of the Faculties) for approval of changes to Regulatory Arrangements relating to the Notaries (Continuing Professional Education) Regulations 2010 on 18 August 2010. This is the Decision Notice in relation to that application. The chronology for handling of this application can be found towards the end of this Decision Notice.

Decision

6. The Faculty Office application is for the approval of the Notaries CPE (Continuing Professional Education) Regulations 2010 ("**CPE Regulations**"). It is proposed that notaries complete a specified amount of Continuing Professional Education ("**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 law and best professional practice. Although many notaries already undertake CPE activities, the CPE Regulations will make this compulsory.
7. A copy of the CPE regulations can be found at the back of this Decision Notice.
8. Notaries will be required to keep a record of their CPE which must be submitted with their Practising Certificate application each year. The Faculty Office will also be able to make spot-checks on a notaries record.
9. The CPE Regulations are intended to commence with immediate effect. The first CPE period starts on 1 November 2010 although the CPE Regulations allow notaries to count CPE credit points before that time.
10. The CPE Regulations are enforced by Rule 19 of the Notaries Practice Rules 2009 which sets out the requirement that "a notary shall, within every such successive period as shall be determined by the Master, participate in such programmes, courses or seminars approved by the Master as may be necessary to acquire the number of credit points determined by the Master."² We note that the Faculty Office will be submitting a further application to alter its regulatory arrangements so that breach of the Notaries Practice Rules 2009 will amount to a disciplinary offence.
11. As the CPE Regulations introduce a new mandatory requirement for all notaries, we have sought confirmation from the Faculty Office that they have considered whether the range of accredited courses available to notaries will meet the needs of the regulated community. This should include suitable geographical coverage or access for those with disabilities. We have also sought clarification on how the CPE Regulations will apply to those notaries unable to fulfil the requirements within a particular year, for example notaries on maternity or paternity leave or those who may be ill for a prolonged period.
12. The Faculty Office has confirmed to us that they are aware of these issues and will seek to ensure that accredited courses meet the needs of the regulated community. Any particular risks regarding the circumstances of individual notaries may also be mitigated by the waiver powers of the Master. For example, the Master may allow notaries to

² Rule 19.1 of Notaries Practice Rules 2009

undertake satisfactory CPE at a distance or to reduce the CPE requirements where appropriate. Further if a notary is ill, on maternity leave or decides to take a break from notarial practice, it will normally be the case that the notary's practising certificate will be suspended in which case they would not need to meet the CPE requirements.

13. Overall, we are content with the Faculty Office's assessment that the proposed arrangements will facilitate and promote the Regulatory Objectives of the Act and the Better Regulation Principles. In particular, we note the assessment in the application that this CPE requirement reflects those made on solicitors and other legal professionals.
14. Therefore, we are satisfied that, having considered the application in the context of Schedule 4 sub paragraph 25(3) criteria, we have no grounds for refusing the application made in whole or in part and are therefore granting the application. The application is therefore approved.

Chronology

- On 18 August 2010 the LSB confirmed receipt of an application from the Faculty Office sent on behalf of the Master of the Faculties for approval of changes to Regulatory Arrangements relating to the Notaries CPE (Continuing Professional Education) Regulations 2010.
- The 28 day initial decision period for considering the application is due to end on Tuesday 14 September 2010.
- This Decision Notice is being published on our website on Monday 6 September 2010.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
Friday 3 September 2010

NOTARIES (CONTINUING PROFESSIONAL EDUCATION) REGULATIONS 2010

WE CHARLES RICHARD GEORGE 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 do make the following Regulations pursuant to Rule 19 of Our Notaries Practice Rules 2009:

PART I: PRELIMINARY

1. Citation and Commencement

- 1.1 These regulations are made under Rule 19 of the Notaries Practice Rules 2009.
- 1.2 These regulations may be cited as the Notaries (Continuing Professional Education) Regulations 2010.
- 1.3 These regulations shall come into force on 1st May 2010.

2. Interpretation

In these regulations:-

- the “continuing professional education period” is a recurring period which commences on 1st November in each year and ends on 31st October a year later except as otherwise provided by these regulations.
- “continuing professional education” is participation in such programmes, courses or seminars accredited by the Master as may be necessary to acquire the number of credit points determined by the Master, and “continuing professional education activity” shall be construed accordingly.
- “the Master” means the Master of the Faculties, or where the Master has delegated his functions under these regulations, the delegated person or persons.
- “the Registrar” means the Registrar of the Court of Faculties.
- “notary” means a public notary admitted by the Master of the Faculties to practise in England and Wales or any other person authorised to act as a notary in accordance with Directive 98/5/EC but does not include a notary serving a period of supervision under rule 3 of the Notaries (Post-Admission) Rules 2009 nor an ecclesiastical notary appointed under rule 4 of the Notaries (Qualification) Rules 1998.

- “notarial activities” means those activities customarily carried on by virtue of enrolment as a notary in accordance with section 1 of the Public Notaries Act 1801 (c. 79), but not including probate activities or conveyancing.
- “probate activities” means preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales, on which to found or oppose—
 - (a) a grant of probate, or
 - (b) a grant of letters of administration.
- “conveyancing” means:-
 - (a) preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002 (c. 9);
 - (b) making an application or lodging a document for registration under that Act;
 - (c) preparing any other instrument relating to real property for the purposes of the law of England and Wales including a contract for the sale or other disposition of land (except a contract to grant a short lease), but does not include an agreement not intended to be executed as a deed, other than a contract that is included by virtue of the preceding provisions of this sub-paragraph,

In this paragraph a “short lease” means a lease such as is referred to in section 54(2) of the Law of Property Act 1925 (c. 20) (short leases).

for the avoidance of doubt the Interpretation Act 1978 applies to these regulations as it applies to an Act of Parliament.

PART II: THE REQUIREMENT

3. Basic Requirement in Notarial Practice

- 3.1 A notary who practises during the continuing professional education period is required to obtain six credit points of continuing professional education in Notarial Practice during the same continuing professional education period.
- 3.2 At least 3 credits of this requirement must be obtained by participation in an accredited activity.

4. Special Requirement in Conveyancing

- 4.1 A notary who carries out Conveyancing in his capacity as a notary during the continuing professional education period is required to obtain six credit points of continuing professional education in Conveyancing during the same continuing professional education period.
- 4.2 At least 3 credits of this requirement must be obtained by participation in an accredited activity.

5. Special Requirement in Probate Activities

- 5.1 A notary who carries out Probate Activities in his capacity as a notary during the continuing professional education period is required to obtain six credit points of continuing professional education in Probate Activities during the same

continuing professional education period.

- 5.2 At least 3 credits of this requirement must be obtained by participation in an accredited activity.

6. Requirement to keep Records

A notary is required to keep a record of the continuing professional education that he has completed during the continuing professional education period in the form set out in Schedule 2 of these regulations a copy of which he must submit to the Registrar on applying for a notarial practising certificate and on request.

7. Investigation by Registrar

The Registrar may call upon the notary to produce such evidence as may reasonably be required in order to ascertain that the information in the continuing professional education record is faithful and accurate.

PART III: CREDIT POINTS AND ACCREDITED COURSES

8. Credit points

- 8.1 One credit point represents one hour of continuing professional education.
- 8.2 Credit points may not be carried over from one continuing professional education period to another except as provided by these regulations.

9. Credit points claimed otherwise than by accredited activities

- 9.1 A notary may claim credit points for activities which have not been accredited under these regulations by completing activities listed in Schedule 1 of these regulations.
- 9.2 Such activities that are listed in Schedule 1 must be completed at an appropriate level and contribute to a notary's professional skill and knowledge in the basic and special continuing professional education requirements, and not merely advance a particular fee-earning matter.

10. Credit points claimed by completing accredited activities

A notary may claim the number of credit points which are awardable by completing an accredited activity.

11. Application for accreditation to award credit points

- 11.1 A person who provides a continuing professional education activity may apply to the Master in order that the activity provided be accredited for the purpose of awarding credit points in one or more of the basic or special continuing professional education requirements.
- 11.2 A person may apply to the Master in order that a continuing professional education activity provided by another person be accredited for the purpose of awarding credit points in one or more of the basic or special continuing

professional education requirements.

- 11.3 On receiving an application for accreditation the Master will inform the applicant whether or not the application has been successful and specify a number of credit points which will be awarded to any notary who completes that activity.
- 11.4 The Master may in specific cases award credit points to notaries who participated on an accredited course before it became accredited provided that the application for accreditation is made no later than six months after the event.

12. **Content of accredited courses**

- 12.1 An accredited course must be relevant to the subject matter of the basic or special continuing professional education requirement.
- 12.2 An accredited course must have written learning objectives relevant to the basic or special continuing professional education requirement and a form of written assessment to evaluate the notary's achievement of those objectives.
- 12.3 A written assessment may take the form of a structured self-evaluation such as the completion of a questionnaire.
- 12.4 An accredited course should take one or more of the following forms:-
 - (a) physical attendance at a lecture or seminar;
 - (b) a course provided wholly or partly at a distance that involves assessment by dissertation or written assessment.

13. **Completion of accredited activities**

- 13.1 A notary completes an accredited activity and is awarded the number of credit points which belong to that activity if he completes the activity.
- 13.2 Completion of the accredited activity occurs if the following are satisfied:-
 - (a) the notary participates in an accredited activity which includes delivering or attending the activity; and
 - (b) attendance is attendance at the complete course. Partial attendance does not constitute completion.
- 13.3 The person providing an accredited activity shall give a certificate to any notary who completes the activity and such a certificate shall contain the following particulars:
 - (a) the name of the person who provided the accredited activity;
 - (b) the name of the notary who completed the activity;
 - (c) the date on which the activity was completed;
 - (d) a brief description of the activity;
 - (e) that the activity is accredited by the Master for the purpose of these

regulations;

- (f) the basic or special requirement in which the activity is accredited;
- (g) the number of credit points which have been awarded.

14. Removal of accreditation

The Master may at any time remove the accreditation of an activity by notice to the provider in writing, which will specify whether the revocation will have immediate effect or will take place at a specified future date.

PART IV: MISCELLANEOUS PROVISIONS

15. Master’s waiver

The Master may in writing waive the requirements of these regulations in whole or in part or revoke such a waiver and any such waiver may be general or specific to one or more individual notaries.

16. Master’s delegation

The Master may in writing delegate his functions under these regulations in whole or in part to another person or persons and revoke in writing such a delegation at any time.

17. Transitional provisions

- 17.1 The first continuing professional education period commences on 1st November after the commencement of these regulations and ends on 31st October two years later.
- 17.2 In the first continuing educational period the notary must complete 12 credit points in each of the basic and special requirements which apply to him.
- 17.3 After the date of the commencement of these regulations a notary may obtain credit points which shall then be carried into the first continuing professional education period and providers of activities may apply to the Master to become accredited.

SCHEDULE 1: CREDIT POINTS AWARDED OTHERWISE THAN BY ACCREDITED COURSES

Activity	Explanation/comments
----------	----------------------

<p>Lectures and seminars</p>	<ul style="list-style-type: none"> • Preparing and delivering or attending a lecture or seminar relevant to the subject matter of the basic or special CPE requirement • Actual time may be claimed
<p>Coaching and mentoring sessions</p>	<ul style="list-style-type: none"> • Structured coaching sessions and structured mentoring sessions relevant to the to the subject matter of the basic or special CPE requirement, delivered face to face, of a duration of thirty minutes or more • Includes acting as a supervisor for the purpose of the Notaries (Post-Admission Rules) 2009 • Actual time may be claimed up to one hour per basic or CPE requirement
<p>Coaching and mentoring sessions delivered at a distance</p>	<ul style="list-style-type: none"> • Structured coaching sessions and structured mentoring sessions relevant to the to the subject matter of the basic or special CPE requirement, delivered at a distance (e.g. by telephone, email or fax), of a duration of thirty minutes or more • Actual time may be claimed up to one hour per basic or CPE requirement
<p>Writing on law or practice</p>	<ul style="list-style-type: none"> • Legal writing on a subject matter relevant to the basic or special CPE requirement intended for publication either in hard copy form or on the Internet • Actual time may be claimed
<p>Research on law or practice</p>	<ul style="list-style-type: none"> • Legal research on a subject matter relevant to the basic or special CPE requirement which results in a form or written document including precedents, memorandums, questionnaires/surveys • Actual time may be claimed
<p>Watching, reading or listening to material which is produced by a legal education provider</p>	<ul style="list-style-type: none"> • Watching, reading or listening to material which is produced by a legal education provider on a subject matter relevant to the basic or special CPE requirement • Actual time may be claimed
<p>Work shadowing</p>	<ul style="list-style-type: none"> • Participation in structured work shadowing schemes with clear aims and objectives on a subject matter relevant to the basic or special CPE requirement and requiring feedback or reflection

	<p>on the shadowing activity</p> <ul style="list-style-type: none"> • Actual time may be claimed
<p>Participation in the development of specialist areas of law and practice</p>	<ul style="list-style-type: none"> • Participation in the development of specialist areas of law and practice on a subject matter relevant to the basic or special CPE requirement by attending specialist committees and/or working parties of relevant professional or other competent bodies charged with such work • Actual time may be claimed
<p>Study towards professional qualifications</p>	<ul style="list-style-type: none"> • Study towards professional qualifications relevant to the basic or special CPE requirement • Actual time spent in study may be claimed
<p>Setting, marking or moderation of examinations in professional qualifications</p>	<ul style="list-style-type: none"> • Setting, marking or moderation in professional qualifications relevant to the basic or special CPE requirement • Actual time may be claimed

Schedule 2

Notaries (Continuing Professional Education) Regulations 2010

CPE Training Record

A copy of this form is to be submitted with your application for a practising certificate
The original is to be retained for a period of at least six years

Name:.....

CPE year:.....

Declaration (to be completed when submitting a copy of this form to the Registrar)

I practise in the following areas as a notary: probate activity / conveyancing (delete as inapplicable)
The information in this CPE record is faithful and accurate to the best of my knowledge and belief

Signature of notary:

Date:

	Date attended	Name of CPE activity and provider	Please indicate whether activity was accredited or non-accredited	Number of credit points awarded	Comments
<u>Notarial Practice</u>					

	Date attended	Name of CPE activity and provider	Please indicate whether activity was accredited or non-accredited	Number of credit points awarded	Comments
<u>Probate Activity</u>					
<u>Conveyancing</u>					

NB: You may continue on separate sheets if necessary, affixing the loose papers to this form

C R George

MASTER

21st April 2010