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OF THE
ARCHBISHOP OF CANTERBURY



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18 March 2019

Dear Paul

**Application to the Legal Services Board for an alteration to regulatory arrangements
Notaries (Post-Admission Training and Supervision) Rules 2019**

On behalf of the Master of the Faculties I am making 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 to replace the current Notaries (Post-Admission) Rules 2009 with new Notaries (Post-Admission Training and Supervision) Rules 2019.

A copy of the proposed new Rules is annexed. Copies of the rules which the amendments replace are available to view on our website at: <http://www.facultyoffice.org.uk/wp-content/uploads/2013/12/Notaries-Post-Admission-Rules-2009-as-amended.pdf>.

A hard copy can be provided if required.

The new rules are principally intended to provide an improved and more consistent framework for the training and supervision of newly admitted notaries in their first two years of practice (or three years if they are undertaking Conveyancing and/or Probate *qua* notary)

Reason for the proposed alteration in regulatory arrangements

Whilst we have no reason to believe that the standard or availability of the current post-admission supervision itself is low, it is certainly the case that the quality and extent of the reporting during, and upon completion of, a notary's supervision period is varied. The new rules therefore introduce a standard form reporting regime which will provide a greater degree of consistency and ensure that the supervisor and supervisee understand what is expected of them

in terms of the areas to be covered. It effectively more closely aligns the post-admission supervision regime with the ongoing inspection regime to which notaries who have completed their supervision period are now subject.

Compliance with the regulatory objectives

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 new Rules are likely to have a neutral effect on this objective as the provisions will not provide any enhanced protection or promotion of the public interest than is provided for under the existing supervision regime. However, the provision of a more consistent reporting regime will enable the Faculty Office to more closely monitor the supervision and training of newly admitted notaries which reduces the risk of inadequate supervision.

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

It is not anticipated that the new rules will have any specific positive or negative effect on the constitutional principle of the rule of law.

(c) improving access to justice

The new rules will have a neutral effect on public access to notaries.

(d) protecting and promoting the interests of consumers

As indicated under (a) above, the new rules are likely to have a neutral effect although the more structured approach to reporting does seek to provide a more consistent supervisory regime and to ensure that supervision does cover all the key areas of a notary's practice will benefit newly admitted notaries and, ultimately, consumers of their services.

(e) promoting competition in the provision of services

The new rules are not expected to have either a positive or negative effect on competition between notaries in the provision of services to consumers.

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

The proposed new rules may contribute to the provision of an independent, strong, diverse and effective notarial profession by ensuring that newly admitted notaries are effectively and consistently supervised.

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

The proposed new rules are unlikely to affect public understanding of citizens' legal rights.

(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; and
- (e) that the affairs of clients should be kept confidential.

All the provisions governing the conduct of a notary are underpinned by the general duty 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 are common to best notarial practice internationally. The new rules will, by seeking to ensure consistent and appropriate supervision,

enhance those professional principles which are directly relevant to notaries, particularly (a), (b), (c) and (e).

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 revised rules comply with the regulatory objectives.

We believe that the other proposed amendments are transparent, accountable, proportionate, consistent and targeted.

The new rules are presented after consultation with the members of the profession and with the two representative membership societies (The Notaries Society and The Society of Scrivener Notaries) by way of direct email to each notary. A summary of the responses to the consultation is enclosed. A number of the recommendations have been incorporated into the rules as now presented for approval.

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

The most significant changes to the rules are to require a list of notaries who are willing to act as supervisors to be drawn up and held by the Faculty Office and this should make it easier for newly admitted notaries to find an appropriate supervisor. This will be easy to monitor.

Similarly, the requirement for more regular and standard form reporting will enable the Faculty Office to more readily monitor a newly admitted notary's progression through their supervision period and remove the reporting inconsistencies which the current supervision regime creates.

Impact on other approved regulators

The amended rules will have no adverse effect on other approved regulators and they will not give rise to regulatory conflict.

Timetable

The amended rules are intended to be made as soon as approval has been given and then signed by the Master. It is hoped that this will be in time to bring them into force on 1st May 2019 in time for the new intake of newly admitted notaries following the release of examination results of those currently on year 2 of the Notarial Practice Course at UCL. The course tutor has alerted the year 2 cohort of the proposed new rules during their studies (and was himself instrumental in preparing the form of reports appearing in the Schedules).

If you have any questions, please do not hesitate to contact my Chief Clerk, Neil Turpin, in the first instance. I look forward to hearing from you in due course.

Yours sincerely

A handwritten signature in black ink that reads "Howard Della". The signature is written in a cursive style with a large, prominent 'H' and 'D'.

H J DELLAR

Registrar