



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

### **The Master of Faculties application for approval of alterations to its Notaries Accounts Rules 1989 regulatory arrangements.**

The Legal Services Board (LSB) has approved the Master of Faculties alterations to its Notaries Accounts Rules 1989 to introduce a requirement to provide an Accountants Report on those Notaries who in their capacity as a notary receive and/or hold client money.

#### **Introduction**

1. The 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 Faculties is an approved regulator.
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 below<sup>1</sup>). 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.

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<sup>1</sup> 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.

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

### **Decision**

6. The Master of Faculties has proposed a change to the Notaries Accounts Rules 1989 to introduce a new reporting requirement. Those Notaries who in their capacity as a notary receive and/or hold client money will have to provide an Accountant's Report to the Registrar when applying for a practising certificate. The Master of Faculties plans to issue guidance as to the form and content of that Report.
7. The Notaries Accounts Rules 1989 already require that appropriate accounting records be maintained and the introduction of an Accountant's Report will provide an independent check and thus contribute to the Regulatory Objective of "protecting and promoting the interest of consumers".
8. Although this is an additional regulatory requirement, the LSB considers that this is appropriate taking into account the risks associated with the receipt and holding of client money.
9. 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.
10. Annex 1 to this Decision Notice contains the Notaries Accounts Rules 1989. The alteration that is approved by this Decision Notice is Rule 11A.

### **Other issues**

11. When considering this application LSB noted that Rules 12(1)(c) and 12(4) do not appear to be consistent with the expected outcomes for consumer complaints about notaries. This will be the subject of separate correspondence with the Faculty Office.

### **Chronology**

- The LSB confirmed receipt of an application from the Master of Faculties on 6 January 2012.
- The 28 day initial decision period for considering the application ended on 3 February 2012.
- The Decision Period was extended to 2 April 2012 on 2 February 2012 to allow for a small number of issues to be concluded.
- This Decision Notice will be published on our website on 13 February 2012.

**Chris Kenny, Chief Executive**  
**Acting under delegated authority granted by the Board of the Legal Services Board**  
**10 February 2012**

## NOTARIES ACCOUNTS RULES 1989

### Citation and Commencement

These Rules may be cited as the Notaries Accounts Rules 1989 and shall come into operation on the 1st day of April 1990.

1. These Rules shall be known as the Notaries Accounts Rules 1989.

1A. Rule 9(2)(d) and Rule 11A shall come into force on the [ ] day of [ ] 2012.

2. (1) In these Rules, unless the context otherwise requires-

"Notary" shall mean a Notary Public and shall include a firm of notaries;

"Client's Money" shall mean money held or received by a notary on account of a person for whom he is acting in relation to the holding or receipt of such money either as a notary or, in connection with his practice as a notary, as agent, bailee, stakeholder or in any other capacity; provided that the expression "client's money" shall not include-

(a) money held or received on account of the trustees of a trust of which the notary is a notary-trustee; or

(b) money to which the only person entitled is the notary himself or, in the case of a firm of notaries, one or more of the partners in the notaries firm;

"Client" shall mean any person on whose account a notary holds or receives client's money;

"Trust Money" shall mean money held or received by a notary which is not client's money and which is subject to a trust of which the notary is a trustee whether or not he is a notary-trustee of such trust;

"Client Account" shall mean a current or deposit account at a bank or deposit account with a building society in the name of the notary and in the title of which account the word "client" appears;

"Bank" shall mean the branch, situated in England or Wales, of a Bank as defined by section 87(1) of the Solicitors Act 1974, as amended by paragraph 9 of Schedule 6 to the Banking Act 1979;

"Building Society" shall mean the branch, situated in England or Wales, of a building society as defined by paragraph 11(5) of Schedule 18 to the Building Societies Act 1986;

"Notary-Trustee" shall mean a notary who is a sole trustee or co--trustee only with one or more of his partners or employees.

"Public Officer" shall mean an officer whose remuneration is defrayed out of moneys provided by Parliament, the revenues of the Duchy of Cornwall or the Duchy of Lancaster, the general fund of the Church Commissioners, the Forestry Fund or the Development Fund;

"Statutory undertakers" shall mean any person authorised by or under an Act of Parliament to construct, work, or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking;

"Local Authority" shall have the same meaning as is given to this expression by the Local Government Act 1972;

"The Faculty Office" shall mean the Court of Faculties of the Lord Archbishop of Canterbury and the words "Master" and "Registrar" shall mean the Master and Registrar thereof respectively.

(2) The Interpretation Act 1889 shall apply to these Rules in the same manner as it applies to an Act of Parliament.

3. Subject to the provisions of Rule 9 hereof, every notary who holds or receives client's money, or money which under Rule 4 hereof he is permitted and elects to pay into a client account, shall without delay pay such money into a client account. Any notary may keep one client account or as many such accounts as he thinks fit.

4. There may be paid into a client account-

(a) trust money;

(b) such money belonging to the notary as may be necessary for the purpose of opening or maintaining the account;

(c) money to replace any sum which for any reason may have been drawn from the account in contravention of paragraph (2) of Rule 8 of these Rules; and

(d) a cheque or draft received by the notary which under paragraph (b) of Rule 5 of these Rules he is entitled to split but which he does not split.

5. Where a notary holds or receives a cheque or draft which includes client's money or trust money of one or more trusts-

(a) he may where practicable split such cheque or draft and, if he does so, he shall deal with each part thereof as if he had received a separate cheque or draft in respect of that part; or

(b) if he does not split the cheque or draft, he shall, if any part thereof consist of client's money, and may, in any other case, pay the cheque or draft into a client account.

6. No money other than money which under the foregoing Rules a notary is required or permitted to pay into a client account shall be paid into a client account, and it shall be the duty of a notary into whose client account any money has been paid in contravention of this Rule to withdraw the same without delay on discovery.

7. There may be drawn from a client account-

(a) in the case of client's money-

(i) money properly required for a payment to or on behalf of the client;

(ii) money properly required for or towards payment of a debt due to the notary from the client or in reimbursement of money expended by the notary on behalf of the client;

(iii) money drawn on the client's authority;

(iv) money properly required for or towards payment of the notary's costs where there has been delivered to the client a bill of costs or other written intimation of the amount of the costs incurred and it has thereby or otherwise in writing been made clear to the client that money held for him is being or will be applied towards or in satisfaction of such costs and

(v) money which is transferred into another client account;

(b) in the case of trust money-

(i) money properly required for a payment in the execution of the particular trust, and

(ii) money to be transferred to a separate bank or building society account kept solely for the money of the particular trust;

(c) such money, not being money to which either paragraph (a) or paragraph (b) of this Rule applies, as may have been paid into the account under paragraph (b) of Rule 4 or paragraph

(b) of Rule 5 of these Rules; and

(d) money which for any reason may have been paid into the account in contravention of Rule 6 of these Rules; provided that in any case under paragraph (a) or paragraph (b) of this Rule the money so drawn shall not exceed the total of the money held for the time being in such account or account of such client or trust.

8. (1) No money drawn from a client account under sub-paragraph (ii) or sub-paragraph (iv) of paragraph (a) or under paragraph (c) or paragraph (d) of Rule 7 of these Rules shall be drawn except by-

(a) a cheque drawn in favour of the notary, or

(b) a transfer to a bank or building society account in the name of the notary not being a client account.

(2) No money other than money permitted by Rule 7 to be drawn from a client account shall be so drawn unless the Master upon an application made to him by the notary specifically authorise in writing its withdrawal.

9. (1) Notwithstanding the provisions of these Rules, a notary shall not be under obligation to pay into a client account client's money held or received by him-

(a) which is received by him in the form of cash and is without delay paid in cash in the ordinary course of business to the client or on his behalf to a third party; or

(b) which he pays into a separate bank or building society account opened or to be opened in the name of the client or of some person designated by the client in writing or acknowledged by the notary to the client in writing.

(2) Notwithstanding the provisions of these Rules, a notary shall not pay into a client account money held or received by him-

(a) which the client for his own convenience requests the notary to withhold from such account, such request being either in writing from the client or acknowledged by the notary to the client in writing; or

(b) which is received by him for or towards payment of a debt to the notary from the client or in reimbursement of money expended or to be expended by the notary on behalf of the client; or

(c) which is expressly paid to him either:-

(i) on account of costs incurred in respect of which a bill of costs or other written intimation of the amount of the costs incurred has been delivered for payment; or

(ii) as an agreed fee (or on account of an agreed fee) for business undertaken or to be undertaken; or

(d) which is expressly paid to him for a disbursement or disbursements which he has agreed with the client to incur and pay within two months of the receipt of the payment

(3) Where a cheque or draft includes client's money as well as money of the nature described in paragraph (2) of this Rule such cheque or draft shall be dealt with in accordance with Rule 5 of these Rules.

(4) Notwithstanding the provisions of these Rules the Master may upon application made to him by a notary specifically authorise him in writing to withhold any client's money from a client account.

10. No sum shall be transferred from the ledger account of one client to that of another except in circumstances in which it would have been permissible under these Rules to have withdrawn from client account the sum transferred from the first client and to have paid into client account the sum transferred from the first client and to have paid into client account the sum so transferred to the second client.

11. (1) Subject to the provisions of Rule 11A below, every notary shall at all times keep properly written up such accounts as may be necessary-

(a) to show all his dealings with-

(i) client's money received, held or paid by him; and

(ii) any other money dealt with by him through a client account; and

(b) (i) to show separately in respect of each client all money of the categories specified in sub-paragraph (a) of this paragraph which is received, held or paid by him on account of that client; and

(ii) to distinguish all money of the said categories received, held or paid by him, from any other money received, held or paid by him.

(2) (a) All dealings referred to in sub-paragraph (a) of paragraph (1) of this Rule shall be recorded as may be appropriate-

(i) either in a clients' cash book, or a clients' column of a cash book, or

(ii) in a record of sums transferred from the ledger account of one client to that of another, and in addition

(iii) in a clients' ledger or a clients' column of a ledger, and no other dealings shall be recorded in such clients' cash book and ledger or, as the case may be, in such clients' columns, and

(b) all dealings of the notary relating to his practice as a notary other than those referred to in sub-paragraph (a) of paragraph (1) of this Rule shall (subject to compliance with the Notaries Trust Accounts Rules 1989) be recorded in such other cash book and ledger or such other columns of a cash book and ledger as the notary may maintain.

(3) In addition to the books, ledgers and records referred to in paragraph (2) of this Rule, every notary shall keep a record of all bills of costs (distinguishing between profit costs and

disbursements) and of all written intimations under Rule 7(a)(iv) and under Rule 9(2)(c) of these Rules delivered or made by the notary to his clients, which record shall be contained in a bills delivered book or a file of copies of such bills and intimations.

(4) Every notary shall within three months of the coming into force of this sub-rule or of his commencing practice on his own account (either alone or in partnership) which shall be later and thereafter not less than once in every succeeding period of three months cause the balance of his clients' cash book (or clients' column of his cash book) to be agreed with his client bank and building society pass book or statements and shall keep in the cash book or other appropriate place a reconciliation statement showing this agreement.

(5) In this Rule the expression "accounts," "books," "ledgers" and records" shall be deemed to include loose-leaf books and such cards or other permanent documents or records as are necessary for the operation of any system of book-keeping, mechanical or otherwise.

(6) Every notary shall preserve for at least six years from the date of the last entry therein all accounts, books, ledgers and records kept by him under this Rule.

(7) No money may be withdrawn from a bank or building society account, being or forming part of a client account, otherwise than under the signature of one at least of the following (either alone or in conjunction with other persons) namely;

(a) a notary who holds a current practising certificate, or

(b) an employee of such a notary being a notary, or

(c) a solicitor or other person holding a registered legal or accounting qualification.

11A Every notary who in his capacity as a notary holds or receives client money which must be paid into client account under these Rules shall, in addition to the provisions of Rule 11 above:

- (1) Procure the preparation by a Reporting Accountant of an Accountant's Report for the Accounting Period and to provide a copy to the Registrar when applying for a practising certificate in accordance with the Public Notaries (Practising Certificates) Rules 1982 and 1991 or such other Rules as may be in force from time to time.
- (2) The Accountant's Report must be prepared and a copy provided to the Registrar within six months of the end of the Accounting Period
- (3) In this Rule 11A:
  - a. "Reporting Accountant" means an accountant who is a member of the Association of Chartered Certified Accounts or the Institute of Chartered Accountants in England and Wales or the Chartered Institute of Public Finance and Accountancy and holds a current practising certificate issued by that body
  - b. "Accountant's Report" means a report which contains the information and in such form and with such completed check list as may be determined by the Faculty office signed by a Reporting Accountant relating to client's money held or received by the notary
  - c. "Accounting Period" means the period for which accounts of the notary are ordinarily made up provided however that it must begin at the end of the previous Accounting Period and cover not more than twelve months
  - d. The Reporting Accountant may not be an accountant who:-
    - i. either at any time between the beginning of the Accounting Period to which the Accountant's Report relates and the signing of the accountant's Report was a partner, employee, employer or officer of the Notary to whose business the Accountant's Report relates or
    - ii. has been disqualified by the Faculty Office and has been given by the Faculty Office notice of disqualification which has not been withdrawn.

- e. The Faculty Office may disqualify an accountant from giving an Accountant's Report if:
  - i. he has been found guilty by the disciplinary tribunal of his professional body of professional misconduct or discreditable conduct; or
  - ii. the Faculty Office is satisfied that the Reporting Accountant has failed in his Accountant's Report to properly identify and explain to the satisfaction of the Faculty Office any breaches of these Rules;
  - iii. in coming to a decision the Faculty Office will take into account any representations made by the accountant and their professional body;
  - iv. the Faculty Office shall notify the notary if he is likely to be affected by an accountant's disqualification,
- f. The Notary must provide the Reporting Accountant with details of all accounts kept or operated by him in connection with the notary's business at any Bank or Building Society at any time during the Accounting Period to which the Accountant's Report relates, including Client Accounts, Office Accounts and
- g. accounts which are not Client Accounts but which contain Client Money.

12. (1) In order to ascertain whether these Rules have been complied with the Master, acting either-

(a) on his own motion; or

(b) on a written statement and request transmitted to him by or on behalf of The Notaries Society or The Society of Scrivener Notaries; or

(c) on a written complaint lodged with him or his Registrar by a third party, may require any notary to produce at a time and place to be fixed by the Master, his books of account, bank and building society pass books, loose-leaf bank and building society statements, statements of account, vouchers and any other necessary documents for the inspection of any person appointed by the Master and

to supply to such person any necessary information and explanations and such person shall be directed to prepare for the information of the Master a report on the result of such inspection. Such report may be used as a basis for proceedings in the Faculty Office.

(2) Upon being required so to do a notary shall produce such books of account, bank and building society pass-books, loose-leaf bank and building society statements, statements of accounts, vouchers and documents at the time and place fixed.

(3) In any case in which The Notaries Society or The Society of Scrivener Notaries are of opinion that an inspection should be made under this Rule of the books of account, bank and building society pass books, loose-leaf bank and building society statements, statements of account, vouchers and any other necessary documents of a notary, it shall be the duty of such Society to transmit to the Master a statement containing all relevant information in their possession and a request that such an inspection be made.

(4) Before instituting an inspection on a written complaint lodged with him by a third party, the master shall require prima facie evidence that a ground of complaint exists, and may require the payment by such party to the Master of a reasonable sum to be fixed by him to cover the costs of the inspection and the costs of the notary against whom the complaint is made. The Master may deal with any sum so paid in such manner as he thinks fit.

13. Every requirement to be made by the Master of a notary under these Rules shall be made in writing, and sent by registered post or the recorded delivery service to the last address of

the notary appearing in the Roll or in the Register kept by the Registrar and, when so made and sent, shall be deemed to have been received by the notary within 48 hours (excluding Saturdays, Sundays and Bank Holidays) of the time of posting.

14. Nothing in these Rules shall deprive a Notary of any recourse or right, whether by way of lien, set off, counterclaim, charge or otherwise, against moneys standing to the credit of a client account.

15. These Rules shall not apply to a notary acting in the course of his employment as (a) a public officer, or (b) an officer of statutory undertakers',

or (c) an officer of a local authority.

16. In any particular case or cases the Master of the Faculties shall have power to waive in writing any of the provisions of these Rules for a particular purpose or purposes expressed in such waiver, and to revoke such waiver.