



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

### **The Master of the Faculties’ rule change application for the approval of the Master of the Faculties Notaries (Practising Certificates) Rules 2012**

The Legal Services Board (LSB) has granted an application from the Master of the Faculties who sought to make amendments to its Public Notaries (Practising Certificates) Rules of 1982 and 1991 (as amended).

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 below<sup>1</sup>) 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 rules<sup>2</sup> 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

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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.

<sup>2</sup> [Rules for Rule Change Applications – Version 2 \(November 2010\)](#)

or is likely to be made in accordance with the procedures (whether statutory or 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.

### **Proposed alterations**

5. The proposed change is to create new Notaries (Practising Certificates) Rules 2012 to replace the existing Public Notaries (Practising Certificates) Rules of 1982 and 1991 (as amended). Under the new Notaries (Practising Certificates) Rules 2012 (the 2012 Rules), a Notary must renew their practising certificate before the start of each new practising certificate year. Provided they have done so, a Notary's practising certificate will remain valid until they receive their new practising certificate. In all cases, if the Notary does not have a renewed practising certificate by 31 December they will no longer be authorised to practise as a Notary and will have their details removed from the list of practising Notaries published on the website of the Faculty Office.
6. Other changes to replace the existing rules with the 2012 Rules are to align the regulatory arrangements for practising certificates with other relevant Master of the Faculties rules. In the 2012 Rules these are:
  - rule 4.2.4 regarding the maintenance of an appropriate Continuing Professional Education Training Record;
  - rule 4.2.5 regarding Accountant's Reports;
  - rule 4.2.6 regarding a written statement of professional independence; and
  - rules 9.2, 9.5, 9.6 and 11 regarding restrictions on practising certificates and appeals.
7. To avoid the possibility of any issue arising as to the validity of practising certificates issued pursuant to the existing rules which are to be revoked by the new rules, the Master of the Faculties proposed that the change come into effect on 1 October 2013.

### **Decision**

8. The principal purpose of the alterations is to update the Master of the Faculties' arrangements for issuing practising certificates and to ensure the relevant rules are more clearly expressed and easily interpreted.
9. In our consideration of the application, we identified in the proposed rules a regulatory gap regarding the continuity of authorisation between the expiry of practising certificates on 31 October each year and the point at which a Notary has completed the practising certificate renewal process. The rules state that a practising Notary must at all times hold a valid practising certificate in order to be authorised. However, a Notary who, compliant with the original rules annexed to the Master of the Faculties' application, has applied for renewal of their practising certificate by 1 November but is yet to receive it would, on 1 November, hold no valid practising certificate. The Notary would consequently not be

authorised and were they to conduct any notarial activities whilst not authorised they would be committing an offence under Section 14 of the Act.

10. We raised this with the Master of the Faculties who agreed with our analysis. A new rule was subsequently included in the proposed 2012 Rules that, where a renewal application has been lodged, the practising certificate issued for the immediately preceding practising certificate year shall remain valid until 31 December or for the period until a Notary receives their renewed practising certificate, whichever is earlier. Additional minor amendments to other rules were made to further clarify these arrangements.
11. The Master of the Faculties regards its consultation with the two representative bodies of which authorised persons they regulate can be members (the Notaries Society and the Society of Scrivener Notaries - collectively, the Societies) to be a fair consultation process to take account of the interests of authorised persons. The Societies were consulted on these proposed changes, and given the number of authorised persons and the fact that the revisions are mainly a consolidation of existing arrangements; we regarded this as an adequate consultation on this set of rules. However, it might not be adequate for consultations on all rule changes.

#### ***LSB's decision-making powers: applications to change regulatory arrangements***

12. The LSB is satisfied that, having considered the Master of the Faculties' application against the criteria in paragraph 25(3) of Schedule 4 to the Act, there is no reason to refuse this application; accordingly, the LSB grants this application.
13. Annex A to this Decision Notice contains the new Notaries (Practising Certificates) Rules 2012.

#### **Chronology**

- The LSB confirmed receipt of an application from the Master of the Faculties on 23 November 2012.
- The 28-day initial decision period for considering the application ends on 23 December 2012.
- This Decision Notice will be issued to the Master of the Faculties on 19 December 2012.
- This Decision Notice will be published on the LSB's website on 20 December 2012.

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

**NOTARIES (PRACTISING CERTIFICATES) RULES 2012**

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 in exercise of the powers conferred by section 4 of the Public Notaries Act 1843 and section 57 of the Courts and Legal Services Act 1990 and of all other powers Us enabling hereby make the following Rules:

**1. Citation and Commencement**

1.1 These Rules may be cited as the Notaries (Practising Certificates) Rules 2012.

1.2 These Rules shall come into force on 31 October 2013.

**2. Interpretation**

In these Rules

- "the Master" means the Master of the Faculties
- "the Registrar" means the Registrar of the Court of Faculties
- "the Court" means the Court of Faculties
- "the Faculty Office" means the Registry or Office of the Court of Faculties
- "the Commissary" has the meaning assigned by the Notarial Appeals and Hearings Rules 2000
- "the Contingency Fund" means the fund established under the Notarial Contingency Fund Rules 1981 (as amended)
- "a Notary" means a Public Notary whose name appears on the Roll of Notaries of England and Wales maintained by the Faculty Office
- "Notarial Act" means any act that has validity by virtue only of its preparation, performance, authentication, attestation or verification by a Notary, and includes any such act carried out by electronic means
- "Practising Certificate Year" means the 1st day of November in a calendar year until the 31st day of October in the following calendar year

- "Reserved Legal Activity" has the meaning set out in the Legal Services Act 2007
- "Specified Profession" and "Relevant Body" have the meanings set out in Rule 10 and the Second Schedule of the 2011 Rules
- "a Finding" means a decision or decisions of the Relevant Body of a Specified Profession
- "the 1998 Rules" means the Notaries (Qualifications) Rules 1998 or any subsequent amendment or replacement thereof
- "the 2011 Rules" means the Notaries (Conduct & Discipline) Rules 2011 or any subsequent amendment or replacement thereof

### 3. **Duty to hold a practising certificate**

- 3.1 A Notary practising as such within England and Wales must at all times hold a practising certificate issued out of the Faculty Office save for those Notaries appointed for Ecclesiastical purposes only pursuant to Rule 4 of the 1998 Rules.
- 3.2 No Notary empowered to practise within England and Wales may do or perform any Notarial Act or any other Reserved Legal Activity which a Notary is authorised to perform unless in possession of a valid practising certificate save for those Notaries appointed for Ecclesiastical purposes only pursuant to Rule 4 of the 1998 Rules.
- 3.3 Practising as a Notary without a valid practising certificate is an offence under Section 14 of the Legal Services Act 2007 and Notarial Misconduct for the purposes of Rule 2.1 of the 2011 Rules.
- 3.4 A practising certificate as a Notary shall be valid and have effect for a single Practising Certificate Year subject to the exceptions set out in Rules 3.5 and 3.6 and the provisions of Rule 4.4 below.
- 3.5 Where a Notary has been admitted during a Practising Certificate Year his or her first practising certificate shall be dated on the day he or she was duly admitted and received their notarial faculty and run until the 31<sup>st</sup> day of October following.
- 3.6 In all other cases the date shall be determined by the Registrar in the circumstances of the case and having regard to the information provided by the Notary as to his or her insurance and practice arrangements.

- 3.7 Notwithstanding the provisions of Rule 4.1 below, if a Notary fails to apply to renew or has not received his or her renewed practising certificate by the 31<sup>st</sup> day of December in a Practising Certificate Year they shall no longer be authorised to practise as a Notary and shall have their details removed from the list of practising Notaries published on the website of the Faculty Office.

#### 4. **Application**

- 4.1 The application for a practising certificate as a Notary shall be in such form as the Master may direct by Order from time to time and, save for any Notary to whom Rule 3.5 or 3.6 above applies, shall be lodged with the Faculty Office no later than the commencement of the relevant Practising Certificate Year.

- 4.2 The application shall be accompanied by:

4.2.1 the payment of such fee for the issue of a practising certificate as the Master may direct by Order from time to time;

4.2.2 the payment of such sum as a contribution to the Contingency Fund as the Master may direct by Order from time to time;

4.2.3 evidence of the insurance cover held by the Notary in compliance with the provisions of either Rule 6 or Rule 7 of these Rules;

4.2.4 a copy of the CPE Training Record maintained by the Notary for the preceding Practising Certificate Year pursuant to the Notaries (Continuing Professional Education) Regulations 2012;

4.2.5 if required pursuant to Rule 11A of the Notaries Accounts Rules 1998 (as amended), an Accountant's Report as therein defined; and

4.2.6 if required pursuant to Rule 8.2 of the Notaries Practice Rule 2009, confirmation that the Notary has sent to his or her employer a written statement of professional independence

together with such other documentation as the Master may direct by Order or request from time to time.

- 4.3 Where a Notary is also a member of a Specified Profession he or she shall lodge with the Faculty Office a copy of their annual practising certificate or other evidence of their entitlement to practise as such within 21 days of receipt of the same from the relevant issuing authority.
- 4.4 Where a Notary has lodged an application for the renewal of his or her practising certificate in accordance with Rule 4.1 above but has not received the renewed practising certificate then the practising certificate issued for the immediately preceding Practising Certificate Year shall remain valid for the purpose of Rule 3.2 until 31<sup>st</sup> December in the new Practising Certificate Year or for the period until he or she receives the renewed practising certificate whichever shall be the shorter.

**5. Form of practising certificate**

A practising certificate as a Notary shall be issued in such form as the Master may direct by Order from time to time.

**6. Insurance**

6.1 All Notaries in practice as such within England and Wales (save for those Notaries appointed for Ecclesiastical purposes only pursuant to Rule 4 of the 1998 Rules) shall at all times hold insurance covering their notarial practice for the following:

6.1.1 insurance against civil liability for professional negligence incurred by the Notary in connection with his or her practice as a Notary; and

6.1.2 insurance against financial loss suffered by a third party in consequence of any dishonest or fraudulent act or any omission by the Notary in connection with his or her practice as a Notary.

6.2 The minimum level of insurance cover in respect of 6.1.1 and 6.1.2 above shall be fixed from time to time by Order of the Master and shall come into force on the 1<sup>st</sup> day of November immediately following.

7. Where a Notary practises also as a member of a Specified Profession and as a member of such profession holds insurance cover in respect of Rule 6.1.1 and 6.1.2 and provided that the Registrar

is satisfied that such insurance cover will extend to the holder's practice as a Notary then the requirements of Rule 6 shall have been satisfied.

8. If the insurance cover held by a Notary in accordance with Rules 6 or 7 above ceases at any time after 1st November in any Practising Certificate Year he or she shall forthwith provide the Registrar with details of the replacement policy or policies of insurance and if the Registrar is not satisfied that the replacement insurance cover is sufficient to comply with the said Rules 6 or 7 the practising certificate as a Notary shall cease to have effect immediately.

9. **Restriction of practising certificate**

9.1 The Registrar may on the issue of any practising certificate under these Rules, having regard to the provisions of these Rules and of any general direction given by the Master, restrict or endorse the certificate as to the matters in which the holder is entitled to practise as a Notary and the wording of the certificate or endorsement shall be as the Registrar shall direct.

9.2 Any Notary whose practising certificate has been restricted or endorsed as above may appeal to the Master against the imposition of such a restriction or endorsement by giving notice to the Faculty Office of such appeal within 14 days of the Registrar's decision.

9.3 Any appeal made by a Notary under Rule 9.2 may be heard by the Master in person or may be disposed of on the basis of written representations if the Notary so agrees.

9.4 Upon hearing such an appeal under Rule 9.3 the Master may either

9.4.1 direct the Registrar to issue a practising certificate to the Notary without condition or endorsement;

9.4.2 direct the Registrar to issue a practising certificate to the Notary containing conditions or endorsements imposed by the Master as he sees fit; or

9.4.3 dismiss the appeal.

9.5 Where a practising certificate held by a Notary has been suspended or restricted pursuant to Rule 6.5 of the 2011 Rules any appeal to the Master or application to the Commissary in respect of such restriction or endorsement shall be referred to the Court.



- 9.6 Where a practising certificate held by a Notary has been suspended or restricted pursuant to Rule 9.1 of the 2011 Rules any application to review the Order (as therein defined) under Rule 11 of the 2011 Rules shall be referred to the Court.
- 9.7 In the event that a Notary fails to provide the information required pursuant to Rule 4.2 above a practising certificate will not be issued. A Notary may appeal against the decision of the Registrar not to issue a practising certificate and the time limit in Rule 9.2 above shall apply. The appeal shall be conducted in accordance with Rules 9.3 and 9.4 above.
10. Where a Notary is a member of a Specified Profession and the Relevant Body of which has made a Finding against that Notary and such Finding discloses evidence of gross misconduct the Registrar may make an order ("an Interim Order") to suspend the Notary's practising certificate or restrict or limit the Notary's practice pending the conclusion of the procedures set out in Rule 10.4 or 10.5 of the 2011 Rules.
11. Where the Registrar has made an Interim Order the Notary may appeal to the Master and the procedure set out in Rule 6.5 of the 2011 Rules shall apply *mutatis mutandis* save that if disciplinary proceedings have been commenced in the Court of Faculties against the Notary any application shall be made to the Commissary.

12. **Revocations**

12.1 The following Order of the Master and Rules are hereby revoked:

- Order of the Master dated 16th June 1982
- The Public Notaries (Practising Certificates) Rules 1982
- The Public Notaries (Practising Certificates) Rules 1991
- The Public Notaries (Practising Certificates)(Amendment) Rules 1993
- The Public Notaries (Practising Certificates)(Amendment) Rules 1995
- The Public Notaries (Practising Certificates)(Amendment) Rules 1999

12.2 Any practising certificate issued pursuant to the rules which are hereby revoked for the Practising Certificate Year ending 31<sup>st</sup> October 2013 shall remain valid until that date or as provided in Rule 4.4 above.