

FACULTY OFFICE

APPLICATION TO THE LEGAL SERVICES BOARD FOR AN ALTERATION
TO REGULATORY ARRANGEMENTS

New Notaries (Practising Certificates) Rules
(to consolidate and update the existing rules referred to in the revocation clause)

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. A copy of the proposed amended Rules is annexed. Copies of the rules which the new rules replace are available to view on our website at www.facultyoffice.org.uk. Copies can be provided if required.

Reason for the proposed alteration in regulatory arrangements

The Public Notaries (Practising Certificates) Rules 1982 and 1991 and the Public Notaries (Practising Certificates)(Amendment) Rules 1993, 1995 and 1999 set out the procedures for applying for an annual practising certificate which all Notaries must have if they wish to practise as such within England and Wales.

The proposed changes are intended to consolidate the above mentioned five sets of rules into a single document and to update the requirements for the issue of a notary's annual practising certificate.

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 new rules are designed to consolidate and update existing rules to provide clarity to the notarial profession as to the requirements for the issue of their annual practising certificate. This includes and reinforces the requirement to provide the Faculty Office with full details of their indemnity and fidelity insurances which enable us to ensure,

so far as possible that they are adequate to provide protection to the public consumer. It also includes and reinforces provisions in the recently amended Notaries Accounts Rules 1998 and the Notaries Practice Rules 2009 relating to the provision, where applicable, of Accountant's Reports and annual Statements of Independence – the former, again, to provide additional protection to the public and the latter to reinforce the independence of the notary from his or her employer which is an essential element of the notarial profession both in England and Wales and throughout the world.

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

The rules set out clearly the requirements for the issue of a practising certificate, the penalty for failing to apply in a timely fashion and the ability of the regulator to impose restrictions on a notary's ability to practise (together with provisions for the notary to appeal against any such restriction). However, as these are very largely consolidations of existing arrangements, it is not anticipated that the rule changes 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 the public access to notaries. As the new rules are simply a consolidation and clarification of the existing requirements, it is not expected that they will discourage notaries from renewing their practising certificates and therefore a contraction in the provision of notarial services is not anticipated.

(d) protecting and promoting the interests of consumers

As indicated above, the rules as they exist already provide protection to and promote the interests of consumers. However, by consolidating and updating the rules the protection and promotion of the interests of consumers will benefit.

(e) promoting competition in the provision of services

It is expected that the amended rules will have a neutral effect on the competition between legal professionals.

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

The proposed consolidation and updating of the rules will have a neutral effect on the independence, strength, diversity and effectiveness of the notarial profession.

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

The rationale behind the consolidation and updating of the Notaries (Practising Certificates) Rules is to provide a single set of rules outlining the requirements for the issue of an annual practising certificate. These rules, along with 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 notaries ought to follow because of their membership of an ancient and distinguished profession.

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 updated and consolidated rules comply with the regulatory objectives.

The proposals arise from a desire to simplify the rules by consolidating them into a single document for the profession, the regulator and the wider public to refer to, to identify the requirements for the issue of a notary's annual practising certificate.

A draft of the new rules was submitted to the two representative membership societies (The Notaries Society and The Society of Scrivener Notaries) who provided feedback and suggested minor amendments which have been incorporated into the rules now presented for approval.

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

I am not anticipating any significant changes following the making of these new rules. As I have indicated above, they are very largely a consolidation of the five sets of rules which they are intended to replace and the incorporation of practical arrangements which have become normal practice in the course of each year's round

of practising certificate renewals and with which the profession are familiar. The principal objective, therefore, is to create a single set of rules dealing with the practising certificate renewal process and the success of that objective will be self evident when the rules are made. The one substantive amendment which the rules make is to provide a specific requirement that notaries should lodge the application for renewal of their annual practising certificate by the 31st October in each year (being the date on which their previous practising certificate expires) and this will provide a measurable impact as against the current "implied" provision. In the round of renewals with which we are currently dealing approximately one-fifth of the profession had lodged their renewal application with the Faculty Office by 31st October.

I shall also invite the representative societies to provide feedback on how the amended rules are perceived by the profession once they are in place. Additional feedback will be sought 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

The amended rules should have no adverse effects 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 and will take effect for the annual round of renewals for the practising year 2013/4. Notwithstanding that the rules will only take effect from next year's renewals, the Master is keen that the rules should be cited as the Notaries (Practising Certificates) Rules 2012.

There is a practical reason for this timetable in that the current Archbishop of Canterbury, Dr Rowan Williams, retires on 31st December. Whilst the statutory provisions entitling the Master to make the rules are unaffected by a Vacancy in the See of Canterbury, the traditional rubric of rules issued by the Master includes reference to his full title of (currently) "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". We are keen to try to avoid the need to use the rather more complex form of wording which is necessary during the period between Dr Williams' retirement and the formal legal confirmation of the election of his successor.

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