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30 September 2013

Dear Ms Reid

**Application to the Legal Services Board for an alteration to regulatory arrangements  
Notaries (Qualification) Rules 2013**

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 <http://www.facultyoffice.org.uk/Notaries4.16.html>. Copies can be provided if required.

**Reason for the proposed alteration in regulatory arrangements**

I should emphasise that although these rules are presented as new rules for 2013, in practice there are only very few amendments to the substantive rules which were introduced in 1998 (as subsequently amended) and are intended to address three main areas:

1. To clarify the requirements for Public Notaries qualified as such in member states of the EEA to transfer such qualification, or re-qualify as appropriate, to enable them to practise in England & Wales; the EC Directive referred to in the 1998 Rules has been replaced by Directive 2005/36/EC. Having sought an Opinion from Queen's Counsel the new Rule 8 sets out a procedure for recognising European qualifications which is compliant with the Directive. At the same time, the opportunity has been taken to remove applicants from Scotland and Northern Ireland from the provisions of the rule for EEA notaries which was an anomaly as they are not, currently, independent states albeit that they have different legal systems from England and Wales. A new Rule 9 makes specific provision

for Scottish and Northern Irish notaries seeking to transfer their notarial qualification, or re-qualify, to permit them to practise in England and Wales.

2. To introduce a requirement for newly academically qualified notaries to commence their practice and supervision period within two years of successful completion of the professional stage of training (i.e. the Notarial Practice Course – currently operated on behalf of the Faculty Office by the Faculty of Laws of University College London);
3. To introduce a new Office Practice Course to provide newly academically qualified Public Notaries with a very practical course guiding them through the practical day-to-day matters involved in running a modern notarial practice and ensuring familiarity with the Notarial Practice Rules 2009 prior to their admission to the Roll of practising notaries.

The intention of all three proposed changes is to provide better protection for the consumer of notarial services by enhancing the training received by new entrants to the profession from England & Wales and ensuring that notaries qualified and used to practising in other European, civil law, jurisdictions (and those from Scotland & Northern Ireland) are adequately prepared to practise in this jurisdiction.

### **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 provide better protection to consumers of notarial services and thereby the public interest by ensuring, so far as possible, that all new entrants to the profession receive an enhanced introduction to notarial practice and to ensure that the period between qualification and commencement of practice under supervision is a maximum of two years. The Master has taken the advice of his Qualifications Board (which is made up of both notaries and

lay members and those with academic experience) who have recommended that, in view of the specialist nature of notarial practice, an applicant to the profession should be required to commence practice as soon as practicable after qualification to ensure that the knowledge gained during qualification does not become out-dated.

So far as notaries seeking to transfer their qualifications, or re-qualify, from member states of the EEA are concerned, the EC Directive provides a mechanism for the recognition of cross-border qualifications. However, given that most, if not all, EEA member states have Civil Law Codes, as distinct from the Common Law jurisdiction applicable in the UK, it is necessary to ensure that all notaries admitted and authorised to practise in England & Wales are properly and appropriately qualified to do so to ensure the proper protection of consumers of their services.

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

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. Ensuring that notaries are all appropriately qualified to act within this jurisdiction will, of course, benefit 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 above, the new rules are intended to enhance the training of new notaries and 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 rules are intended to encourage an effective notarial profession. It is an essential facet of the Notarial profession that they be independent. The new rules are expected to have a neutral effect on the strength and diversity 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.

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. The new rules will enhance the ability of new entrants to the profession to maintain proper standards of work by requiring completion of the Office Practice Course and ensuring that the knowledge gained during the qualification process is put into practice as soon as practicable.

### **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.

The proposals arise from the need to update the procedures for the recognition of the qualifications of EU-qualified notaries and to make provisions for them to be admitted to practice in England & Wales in accordance with the Directive.

The Master received the advice and input of the Qualifications Board, created by the original rules in 1998, on the scope and content of the new rules, in particular the three areas referred to above.

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. As indicated above, the Rules also take account of the Opinion of Queen's Counsel on the application of the relevant EU Directive.

**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 far as the amendments relating to the recognition of EEA notarial qualifications are concerned, these are required to ensure that the Faculty Office rules mirror the procedures adopted in practice in recent cases to correctly apply the relevant EC Directive

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 and how applicants respond to the Office Practice Course. 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**

As 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 and will come into force on the first day of the month following. They will then be applied to all applications received for qualification and admission as a notary from such date.

If you have any questions, please do not hesitate to contact my 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 initial 'H' and a long, sweeping tail.

**H J DELLAR**  
Joint Registrar