



FACULTY OFFICE

CONTINUING PROFESSIONAL EDUCATION REGULATIONS 2010

NOTARIES (POST-ADMISSION SUPERVISION AND TRAINING) RULES 2019

PROPOSED AMENDMENTS

The Regulations

The Continuing Professional Education Regulations 2010 have force under section 22 the Notaries Practice Rules¹ which requires that a notary having commenced practice and having satisfactorily completed the required period of post-qualification supervision, shall participate in such programmes, courses or seminars approved by the Master as may be necessary to acquire the number of credit points determined by the Master in any given period. This requirement is called continuing professional education.

Those Regulations can be understood further by reading the Question and Answer document that appears in Annex 1.

The Notaries (Post Admission Supervision and Training) Rules 2019 mainly concern a notary's first few years of practice, where they are under a period of supervision.

The issues

A working party was set up in late 2019 to look at various questions around the qualification and training of notaries. One of the questions was:

"Whether the requirements as to Continuing Professional Education are right – see the Notaries (Continuing Professional Education) Regulations 2010".

The working party reported back in early 2020² and it considered that the balance between accredited and non-accredited activities was correct and the number of points/hours required in each was also proportionate. Generally, it is considered that the CPE regime was working well.

There was no enthusiasm for ceasing to make CPE compulsory and a fear that it would drop off notaries' list of priorities should that happen.

The working party supported by the Qualifications and Advisory Boards recommended that the Master be given a discretionary power to make provision for extra training for someone who had not held a

¹ The 2010 Regulations were made under Rule 19 of the Notaries Practice Rules 2009 but have continuing force under the transitional provisions of the Notaries Practice Rules 2019 which replaced them. If the regulations were to be remade, they would be remade under Rule 22 of the Notaries Practice Rules which is in an identical form to the old Rule 19.

² Faculty Office Working Party of Advisory and Qualification Boards Review of the Professional Qualifications and Training of Notaries and Continuing Professional Education, 13th January 2020.

practising certificate for 2 until 5 years (at 5 years there is already a provision). *This would require an amendment to the Notaries (Post-Admission and Training) Rules 2019.*

For probate and conveyancing CPE it was considered appropriate to retain the distinct requirement in these areas at the current level. It was not thought appropriate to create a distinct requirement in any other area of the law although it was recommended that the Faculty Office keep under review developing areas of practice if they did not fall within the CPE Regulations.

There was some discussion around the current importance of anti-money laundering and terrorist finance. The working party recommended that you require a point in AML once every three years as part of their three accredited notarial practice points. This is on top of the notary's pre-existing duty to be cognizant of the AML Regulations and to declare to the Faculty Office as such. The Qualifications Board went one stage further and recommended that the Master require a point in AML annually until further notice. It was considered important enough and that there was sufficient new material that notaries would need to get on top of year on year. There was some difference of opinion about whether this should be part of the existing points required to be obtained or additional to them and this is for discussion with you. The Faculty Office support the recommendation that the AML point be required annually until further notice. *This would require an amendment to the CPE Regulations 2010. It would be a regulation that the Master may from time to time direct that the notaries must obtain a credit point or points on a particular area of legal knowledge or practice.*

At the Master's Council meeting on 23rd March 2020 these recommendations were accepted.

The proposals

First proposal

An amended version of the Continuing Professional Education Regulations 2010 accompanies this paper and inserts a new Regulation 15:

" 15. *Specific requirement as to subject matter*

The Master may by order made before the commencement of a continuing professional education period require that a particular notary or some or all notaries obtain in that coming period, one or more of the credit points required to be obtained by them, whether as part of the basic or special continuing professional education requirement, in a particular subject or through a specific accredited activity."

The drafting is intended to allow the Master discretion to stipulate training requirements either for all notaries or a class of notaries or a specific notary, as the Master considers appropriate. Such flexibility should help cater the requirements to where the Faculty Office considers there is a particular knowledge gap or lack of good practice. The drafting allows the Master to determine the subject matter or a specific activity (eg a specific course).

The Regulations can either be amended or remade to include the additional regulation mentioned (and to make the Regulations gender-neutral). Consideration should be given as to whether this is a change in regulatory arrangements which would require the prior consent of the Legal Services Board.

Second proposal

The Faculty Office also propose to amend Rule 11 of the Notaries (Post Admission Supervision and Training) Rules 2019 as follows:

Resuming practise after career break

11. (1) Any notary who has ceased to practise as such for any reason for a period of five years or more shall complete such period of supervision and continuing education to the extent and for such period specified by the Master and on such terms as the Master may direct.

(1A) The Master may direct that a notary who has ceased to practise as such for any reason for a period of two years or more shall complete such period of continuing education to the extent and for such period that the Master considers suitable.

(2) The Registrar shall only issue a practising certificate to such notary pursuant to rule 3 of the Notaries (Practising Certificate) Rules 2012 in accordance with the directions of the Master given under rule 11 (1).

It is recognised that career breaks are perfectly normal and to be expected for a wide number of reasons including personal choice, paternity, looking after family members and sickness. The proposed 1A is not intended to put such notaries at a disadvantage, but to allow the Master on a discretionary basis to require such notaries to undergo further continuing education to catch-up with changes in law and practice during the time that they have been away from their work. The working party considered that up to two years away from work, there ought to be no stipulation, but between two and five years (where the present stipulation is that further supervision or continuing education is compulsory), the Master ought to have the discretionary power to require additional education (but not supervision).

Date: 26th January 2021

Annex 1 - Continuing Professional Education Regulations Q and A's

Question 1. What is the authority for the regulations?

The regulations are made under Rule 19 of the Notaries (Practice) Rules 2009.

Question 2. What is the purpose of the regulations?

CPE is designed to ensure that you keep up with changes in the law and best professional practice. You may already undertake CPE activities. The regulations now make CPE compulsory.

Question 3. I am a newly qualified notary serving a period of supervision under the Notaries (Post-Admission) Rules. Do the regulations apply to me?

No. The definitions section excludes supervised notaries.

Question 4. I have not renewed my practising certificate. Do the regulations apply to me?

No. You are not going to “practise” during the CPE year and therefore none of the basic or special CPE requirements apply to you.

Question 5. What is the requirement?

The requirement differs depending on your professional practice. All notaries are required to obtain 6 credit points (effectively 6 hours) in Notarial Practice every CPE year (called in the regulations the “CPE period” and which coincides with the practising certificate year). At least 50% of this requirement must be satisfied through participation on accredited courses. The remaining 50% or less may be satisfied by participating in non-accredited activities.

If the notary practises in conveyancing as a notary he must obtain 6 credit points every CPE year, at least 50% of which must be through accredited courses.

If the notary practises in probate as a notary he must obtain 6 credit points every CPE year, at least 50% of which must be through accredited courses.

There is a possible maximum requirement of 18 credits points (effectively 18 hours) each CPE year, of which half must be on accredited courses.

In order to ease the transition to the new system, the first CPE period will last for two years (1st November 2010 – 31st October 2012) and 12 credit points from each practice area on which you are engaged must be satisfied over the two-year period.

You may also begin obtaining credit points before 1st November 2010 which will count for the first CPE period.

Question 6. How does the Faculty Office check that I am keeping up with the requirements?

You are required to keep a record sheet (which is included with the regulations), a copy of which is submitted at the end of every CPE year along with the practising certificate renewal forms. A new record sheet will be sent out with the practising certificate renewal forms or a duplicate can be made from the version included with the regulations. The original record sheets should be kept with your other records for at least six years after completion.

The Faculty Office will perform spot-checks under regulation 7 to ensure that your declarations are

honest and accurate and, where you claim not to do probate or conveyancing work, to inspect your records to see that that is in fact the case.

Question 7. What if I only do one conveyancing transaction over the CPE year. Must I still obtain six credit points (effectively 6 hours) in that year?

Yes. The purpose of the regulations is to ensure that the notary is fit to practise at a high level of competence. Therefore even if the notary is only undertaking a small diet of conveyancing or probate work he must complete the whole requirement. Effectively this will mean that a notary will have to make a choice early in the CPE year whether or not he wishes to maintain his capacity to do probate and conveyancing work.

Question 8. I only do probate and conveyancing work but not 'pure' notarial acts. Can I ignore the requirement to complete CPE in notarial activity?

No. The notarial CPE is a basic requirement for all those who hold a notarial practising certificate. Only the requirement to do conveyancing and probate CPE depends on the nature of the notary's practice.

Question 9. I am also a solicitor. How can I avoid duplicating the amount of CPE/CPD work that I need to do?

The CPE requirements in these regulations are independent of any requirement which may be made by another professional body of which the notary may be a member. However, in order to avoid duplication, the notary may apply for the activity which is accredited with the Solicitors Regulation Authority or other regulatory body to be accredited for the purpose of these regulations as well. Alternatively, the activity may constitute part of the notary's non-accredited CPE.

To apply for another provider to become accredited under these regulations you should send the provider's literature to the Faculty Office or your own summary of the written objectives of the course, lecture or programme. Check regulations 12 and 13 for what an accredited activity must involve.

Question 10. I attended a useful lecture on probate law but did not have the opportunity of applying to the Master for its accreditation. Have I lost the opportunity to obtain the credit points?

You may be able to claim credit points for satisfying the non-accredited part of your CPE. Alternatively, the Master may retrospectively accredit activities and award credit points. However he is only likely to do this on a sparing basis.

Question 11. I wish to take a sabbatical part-way through the CPE year. Do I still need to do the full CPE requirement?

The Master may waive the requirements of the regulations in whole or in part. The Master is only likely to waive the requirements when your practice has been suspended, whether voluntarily or otherwise, and in such a case he may also to suspend your practising certificate for the relevant period.

Question 12. What type of non-accredited activities count for obtaining credit points?

Please read Schedule 1 of the regulations. Such activities must be completed at an appropriate level and contribute to your professional skill and knowledge in the relevant CPE requirements, and not merely advance a particular fee-earning matter.

Question 13. Where can I find a list of accredited activities?

Your professional notarial society will provide CPE in notarial practice. Please contact the Notaries Society and Society of Scrivener Notaries for information on their events.

The Faculty Office may maintain a page on its website with a list of the main providers of accredited activities once applications for accreditation have been received.