

## NOTARIES (GUERNSEY) INTERIM PRACTICE RULES 2018

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WE CHARLES RICHARD GEORGE One of Her Majesty's Counsel Commissary or Master of the Faculties of the Most Reverend Father in God Justin Portal by Divine Providence Lord Archbishop of Canterbury Primate of All England and Metropolitan hereby make the following Rules:

### 1. Citation, Commencement, Duration and Application

- 1.1 These Rules may be cited as the Notaries (Guernsey) Interim Practice Rules 2018
- 1.2 These Rules come into force on the 1st day of March 2018
- 1.3 These Rules shall cease to have effect on the 31st day of December 2020 subject to any further Rules or Order of the Master
- 1.4 These Rules shall apply to the Bailiwick of Guernsey

### 2. Interpretation

#### 2.1 In these Rules

- **“client”** includes any person who has instructed a notary to carry out a notarial act and any person who has placed legitimate reliance on a notarial act;
- **“firm”** includes a sole practitioner and professional partnership (which expression shall include a limited liability partnership and any other body corporate) the members of which are authorised to conduct legal practice as such;
- **“the Master”** means the Master of the Faculties;
- **“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;
- **“notary”** includes a firm of notaries;
- **“performance”** includes execution completion and carrying out;
- **“person”** includes a body corporate or unincorporated association or group of persons;
- **“principles”** means the general principles set out in rule 5;
- **“the Registrar”** means the Registrar of the Court of Faculties;

2.2 for the purposes of these Rules

2.2.1 a notary's practice includes the preparation and performance of notarial acts and any other service undertaken as a notary whether or not such service may only be undertaken by a notary;

2.2.2 reference to any other rules or regulations which govern the practice of a notary in Guernsey and made by the Master shall include any rules and regulations made in substitution therefor;

2.2.3 words importing the masculine gender shall include the feminine gender and words importing the singular shall where the context so admits include the plural and vice versa

### 3. Oath of Office

A notary shall exercise the office of public notary in accordance with the Oath or Declaration made by him at the time of the grant of his Notarial Faculty as set out in section 7 of the Public Notaries Act 1843 and shall offer appropriate notarial services to any person lawfully and reasonably requiring the same.

### 4. Annual Registration

4.1 Subject to rule 4.2 no later than the first day of January in each year any notary practising as such within the Bailiwick of Guernsey shall register his notarial practice with the Registrar of the Faculty Office on such form as the Master shall from time to time prescribe and upon payment of such fee as the Master shall from time to time prescribe by Order and including the following information

4.1.1 Evidence of professional indemnity insurance cover held by the notary in respect of his notarial practice as provided for in rule 4.1.1 of the Notaries (Guernsey) Interim Qualification and Admission Rules 2018;

4.1.2 Evidence where necessary of fidelity insurance cover held by the notary in connection with his notarial practice as provided for in rule 4.1.2 of the Notaries (Guernsey) Interim Qualification and Admission Rules 2018;

4.1.3 Evidence of compliance with the requirements of Rule 20 in respect of Continuing Professional Education, together with such other documentation or information as the Master may from time to time require.

4.1.4 Any notary failing to register his notarial practice by the 1st day of February in each year shall be deemed no longer authorised to practise as a notary and may be guilty of Notarial Misconduct as defined by rule 2 of the Notaries (Guernsey) Interim Conduct and Discipline Rules 2018.

4.1.5 If satisfied on receipt of the abovementioned evidence the Registrar shall forthwith place the name and contact details of the notary on The Faculty Office website.

- 4.1.6 In respect of rule 4.1.2 above, the Registrar may waive the requirement for fidelity insurance cover for that year if he is satisfied that:
- (a) the notary holds no client monies in his capacity as a notary; and
  - (b) there is no risk to the public from the activities of the notary in that capacity.

- 4.2 In the first year in which these rules take effect the dates for the purposes of rules 4.1 and 4.1.4 shall be 1st May and 1st June respectively.

## **5. General Principles**

- 5.1 Without prejudice to rule 3 above a notary shall exercise his office at all times in accordance with the principles set out below and these rules shall be read in accordance with such principles.

- 5.2 A notary shall:

- 5.2.1 uphold the rule of law and the proper administration of justice;
- 5.2.2 act with integrity;
- 5.2.3 maintain his independence and impartiality;
- 5.2.4 provide a prompt and proper standard of service for all clients;
- 5.2.5 act in a way that maintains the trust in the office of notary which the public may reasonably expect;
- 5.2.6 comply with all legal and regulatory obligations and cooperate with the Master and any persons or body appointed by him in exercise of the Master's regulatory functions;
- 5.2.7 operate his notarial practice in accordance with proper governance and sound financial and risk management principles; and
- 5.2.8 operate his notarial practice in such a way as to provide equality of opportunity and respect for diversity.

## **6. Code of Practice**

- 6.1 A notary shall at all times have regard to any code or codes of practice approved by the Master from time to time.
- 6.2 Failure to comply with this rule may amount to "Notarial Misconduct" as defined by rule 2 of the Notaries (Guernsey) Conduct and Discipline Rules 2018.

## **7. Bankruptcy**

## **8. Obtaining Instructions**

A notary shall not directly or indirectly obtain or attempt to obtain instructions for professional work or permit another person to do so on his behalf, or do anything in the course of practising as a notary, in any manner which compromises or impairs or is likely to compromise or impair any of the following:

- 8.1 the principles;
- 8.2 a person's freedom to instruct a notary of their choice;
- 8.3 the notary's ability to act in the best interests of the client;
- 8.4 the good repute of the notary or of the notarial profession;
- 8.5 the notary's proper standard of work;
- 8.6 the notary's duty of care to persons in all jurisdictions who may place legitimate reliance on his notarial acts.

## **9. Duty to inform instructing person of right to complain**

- 9.1 When a notary accepts instructions for professional work or changes the terms on which he is acting he must provide the client with a copy of a form of words prescribed by the Master from time to time (the "prescribed form of words") which explains that the client has a right to make a complaint under Part II of the Notaries (Guernsey) Conduct and Discipline Rules 2018 and how to make such a complaint.
- 9.2 The prescribed form of words may be provided to the client electronically.

## **10. Conflicts of Interest**

In the conduct of his practice a notary shall not favour the interests of one client over those of another and shall not favour his own interests or those of any other person over those of his clients.

## **11. Duty to Act Impartially in respect of Notarial Acts**

A notary must act impartially and in particular must not perform any notarial act which involves or may affect:

- 11.1 his own affairs, including matters in which he is personally interested jointly with another person;
- 11.2 the affairs of his spouse or partner or a person to whom the notary is engaged to be married (for the purpose of this sub-rule, "partner" means a person with whom the notary cohabits or with whom he has a sexual relationship and includes a partner of the same sex);
- 11.3 the affairs of a person to whom he is directly and closely related;

- 11.4 the affairs of a person with whom he is in a professional partnership or by whom he is employed or from whom he receives a benefit by being provided with office accommodation or other facilities for his notarial practice;
- 11.5 the affairs of a person who has appointed the notary to be his attorney which concern a matter within the scope of the power of attorney granted;
- 11.6 the affairs of a trust of which he is personally a trustee or of an estate where he is a personal representative of the deceased;
- 11.7 the affairs of a body corporate of whose board of directors or governing body he is a member;
- 11.8 the affairs of an employee of the notary;
- 11.9 the affairs of a partnership of which he is a member or of a company in which the notary holds shares either exceeding five percent of the issued share capital or having a market value exceeding such figure as the Master may from time to time specify.

## **12. Employed Notaries**

- 12.1 Save as permitted by rule 12.2 a notary who is the employee of a non-notary shall not perform any notarial act as part of his employment or do or perform any notarial act for his employer or his employer's holding, associated or subsidiary company.
- 12.2 A notary may act for a person who is also the client of the qualified legal practitioner or firm of qualified legal practitioners by which he is employed but he shall take all proper and reasonable steps in the exercise of his notarial practice to maintain his independence of his employer and in particular he shall:
  - 12.2.1 ensure that his independence and integrity as a notary is fully recognised in writing in any contract of employment entered into by him.

## **13. Language**

- 13.1 Notarial acts shall normally be drawn up in the English language.
- 13.2 A notary may upon request or in appropriate circumstances prepare a notarial act in a language other than English if he has sufficient knowledge of the language concerned.
- 13.3 A notary may not authenticate by means of a notarial act a document drawn up in a language other than English unless he has satisfied himself as to its meaning but this does not prevent a notary from authenticating the execution or signature of a document in any language.
- 13.4 A notary may not certify the accuracy of a translation that has been made by someone other than himself unless he has knowledge of the language

sufficient to satisfy himself as to the accuracy of the translation but this does not prevent a notary from attesting a translator's affidavit or authenticating a verification.

#### **14. Undertakings**

- 14.1 Any notary giving an undertaking, as a notary, whether oral or in writing, shall be personally liable for that undertaking, and the implementation of any such undertaking is required as a matter of conduct. Save in exceptional cases a failure by a notary to honour an undertaking will constitute Notarial Misconduct as defined in rule 2 of the Notaries (Guernsey) (Conduct and Discipline) Rules 2018.
- 14.2 An undertaking given by a notary in writing or confirmed in writing shall be signed by the notary giving it.

#### **15. Publicity**

A notary may advertise his practice and seek to obtain directly or indirectly clients and business in any manner and through any medium whether informative or promotional with the exception of unsolicited telephone calls or unsolicited visits to persons or organisations provided that:

- 15.1 the principles are upheld;
- 15.2 the client's freedom to instruct a qualified person of the client's choice is not thereby unduly restricted;
- 15.3 the notary's good reputation for integrity and professional standards of work is not thereby damaged;
- 15.4 he complies with any relevant non-statutory code of advertising standards and practice currently in force;

but nothing in this rule shall be construed as authorising the use of the word "notary" or any word designating or indicating notarial services in any publicity for activities which are not of a notarial nature.

#### **16. Introductions and Referrals**

When a notary enters into an arrangement with another person for the introduction of clients to the notary or by the notary to the other person he must ensure:

- 16.1 that the client is informed in writing of the arrangement and of any commission or other benefit the notary may be receiving or pay;
- 16.2 that he either obtains the client's written agreement as to the destination of the commission or accounts to the client for the commission;
- 16.3 that he remains able to advise the client independently in accordance with these rules and continues to do so regardless of his own interests.

## **17. Fees**

- 17.1 A notary may charge a professional fee for all notarial work undertaken by him, and the basis upon which that fee will be calculated or the fee to be charged for the work done, shall be made known in advance to any new client.
- 17.2 Subject to rule 17.3 below a notary shall not share or agree to share his professional fees with any person not entitled to act as a notary; provided that this rule shall not prohibit the payment of any allowance or allowances, sum or sums of money, that are or shall be agreed to be made or paid to the widows or children of any deceased notary or notaries, by any surviving partner or partners of such deceased notary or notaries.
- 17.3 A notary who also practises as a qualified legal practitioner either in a professional partnership or as an employee may share professional fees provided that:
  - 17.3.1 his professional partners or employer are also qualified legal practitioners;
  - 17.3.2 the notary shall keep accounts which enable the income and expenditure arising from his practice as a notary to be distinguished from the income and expenditure arising from his practice or employment as a qualified legal practitioner; and
  - 17.3.3 shall furnish the Faculty Office with such additional information as to his professional partnership and accounting arrangements or his employment as may be prescribed in rules or orders of the Master.

## **18. Investment Business**

## **19. Supervision of a Notary's Office**

- 19.1 A notary shall take reasonable steps to ensure that every office where he practises is and can be seen to be:
  - 19.1.1 open, save exceptionally and for a good reason, during normal office hours for the provision of appropriate notarial services to members of the public; and
  - 19.1.2 properly supervised.

## **20. Continuing Professional Education**

- 20.1 After commencing practice and having satisfactorily completed the required period of supervision, a notary shall, within every such successive period as shall be determined by the Master, 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.
- 20.2 Upon determination by the Master of the periods and number of credit points, they shall be included in regulations made by the Master under this rule from time to time.

## **21. Duty to Keep Records**

- 21.1 A notary shall keep proper records of his notarial acts in accordance with this rule.
- 21.2 The records so kept must clearly identify:
  - 21.2.1 the date of the act;
  - 21.2.2 the person at whose request the act was performed;
  - 21.2.3 the person or persons, if any, intervening in the act and, in the case of a person who intervened in a representative capacity, the name of his principal;
  - 21.2.4 the method of identification of the party or parties intervening in the notarial act, and in the case of a party intervening in a representative capacity, any evidence produced to the notary of that party's entitlement so to intervene;
  - 21.2.5 the nature of the act;
  - 21.2.6 the fee charged.
- 21.3 In the case of a notarial act in the public form, the notary shall place an original of the act or a complete photographic copy of the same in a protocol which shall be preserved permanently by the notary and for the avoidance of doubt such preservation may be by means of a suitable digital or other electronic system providing for the storage of documents in an indelible and unalterable format.
- 21.4 Records of acts not in public form kept in accordance with rule 21.2 shall be preserved for a minimum period of twelve years and for the avoidance of doubt such preservation may be by means of a suitable digital or other electronic system providing for the storage of documents in an indelible and unalterable format.
- 21.5 A notary who preserves records by means of a digital or other electronic system in accordance with rules 21.3 and 21.4 shall notify the Registrar of the name and contact details of such other suitably authorised person who has



access to the digital or other electronic system who would be able and willing to cooperate with the Registrar in obtaining access to the said system in the event of the incapacity, death or other unavailability of the notary.

- 21.6 A copy of a notarial act or of the record of a notarial act preserved in accordance with rules 21.3 and 21.4 shall, upon payment of a reasonable fee, be issued upon the application of any person or authority having a proper interest in the act unless prevented by order of a competent court.
- 21.7 Any question as to whether a person has a proper interest in an act for the purposes of rule 21.6 shall be determined by the Master.

## **22. Inspections**

A notary's premises, records and practice may be inspected on behalf of the Master and as directed by him.

## **23. Notaries Ceasing to Practise**

- 23.1 When a notary ceases to practise as such then he, or failing him his continuing notarial partners or the person having possession or custody of the records maintained by him pursuant to rule 21, shall arrange for such records to be transferred:
- 23.1.1 to another notary in practice appointed by him or by his continuing notarial partners;
- 23.1.2 to another notary in practice appointed, with the approval of the Master, by the persons having possession or custody of the records; or
- 23.1.3 to any archive designated for the purpose under regulations made by the Master from time to time;
- and the persons making such transfer shall give written particulars to the Registrar of the date of transfer and the person or archive to which the records were transferred.
- 23.2 The provisions of rule 21 shall apply to a notary or archive to which the records of any notary are transferred pursuant to this rule as they apply to the notary himself.

Dated 28th day of February 2018

CHARLES GEORGE

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The Right Worshipful Charles R George, QC  
Master of the Faculties