



The Faculty of Notaries Public in Ireland



The Notaries Society of England and Wales



The Society of Scrivener Notaries

THE ORGANISATION AND FUNCTION OF THE NOTARIAL PROFESSIONS IN THE UNITED KINGDOM AND IRELAND



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THE ORGANISATION AND FUNCTION OF THE NOTARIAL PROFESSION IN THE UNITED KINGDOM AND IRELAND

1.0 INTRODUCTION

- 1.1 The United Kingdom is a unitary State comprising England and Wales, Scotland and Northern Ireland.

By virtue of the constitutional establishment of the United Kingdom the respective legal systems of the constituent countries have been maintained and are enshrined in statute (Act of Union 1707).

The distinctive nature of the legal systems is well known — England and Wales and Northern Ireland are common law jurisdictions, Scotland is a Roman law based system with common law influences. Separate court structures and legal professions as well as distinctive laws ensure the preservation of the individual legal traditions.

- 1.2 Schedule A, Parts 1 – 3 contains a brief history of the development of the notarial profession in England and Wales, Scotland and Northern Ireland.

In countries whose legal systems derive from the Roman civil law as modified by the Napoleonic code (continental Europe, Latin America, French-speaking Africa, especially — hereafter called "civil law countries"), the notary has a much more prominent role than in the United Kingdom and within each civil law country is the lawyer primarily responsible for non-contentious legal work; contentious work, on the other hand, is handled by advocates. Until recent years, notaries in civil law countries handled very little international work, but the demands of international commerce have resulted in a greater involvement of notaries in this area. In the context of his role as a public certifying and authentic acting officer the notary has been principally concerned with creating legal instruments, especially in the fields of conveyancing, inheritance and family law in general. In many civil-law countries, notaries are the primary legal professionals handling the incorporation of companies and other legal entities; they also handle many other business-law matters.

The civil codes of all true civil law countries have conferred a special evidentiary status on notarial acts known variously as "authenticity" or "public faith". This has meant that the statements of fact made by a notary in a written instrument are receivable in court as evidence of the facts recorded and that those statements are irrebuttable unless a litigating party brings a special plea alleging fraud or forgery. Because of the common law's traditional preference (now much eroded by statute and rule of court) for obtaining evidence by the examination of witnesses on oath in open court and the development of the rule against hearsay as it affects documentary proof, the notarial act and notarial evidence have not

always in the past been accorded the same status of "authenticity" in common law jurisdictions. Rule 32.20 of the Supreme Court of England and Wales County Court of England and Wales Civil Procedures (Amendment No. 3) Rules 2005 now confirms that Notarial Acts or Instruments do have full probative force and so are Authentic Acts. Scots law, with its part civil law derivation, has always accorded an element of probativity to notarial acts which goes some way towards adoption of the "public faith" principle.

1.3 Since its foundation in 1992 as a body for discussion and co-operation in the important area of notarial practice, the United Kingdom Notarial Forum has consistently advocated the enactment of legislation confirming the accordance of public faith to notarial acts issued anywhere in the United Kingdom since it believes that the use, which need not be obligatory, of notarial evidence is capable of greatly enhancing the efficacy of business transactions (particularly in the computer age), providing some benefits in the administration of civil justice (by reducing areas of conflict) and ultimately assisting harmonisation of the status of legal documents throughout the European Union and thereby enabling the free circulation of such documents within the Union. The Forum's goal was achieved in 2005 when the Civil Procedure Rules regulating the conduct of proceedings in the High Court of England and Wales were amended to confirm the probative force of Notarial Acts.

1.4 Republic of Ireland

Ireland, or in the Irish language Éire, formerly part of the United Kingdom of Great Britain and Ireland, is a sovereign, independent, democratic state. It is a republic with a written constitution, Bunreacht na hÉireann (1937) as now amended. Republic of Ireland is the description of the State.

The principal source of law is the Constitution. Ireland is also governed by the principles of common law. The decisions of the superior courts in Ireland constitute an important source of Irish law, as do the decisions of the English courts of record made prior to 1922 – the year in which Ireland ceased to be part of the United Kingdom. While decisions of the English courts of record made after 1922 have no binding authority in the Irish courts, they are regarded as possessing persuasive authority.

Schedule A4 contains a brief history of the Notarial profession in Ireland.

2.0 MEMBERSHIP AND OBJECTIVES OF THE UNITED KINGDOM AND IRELAND NOTARIAL FORUM

2.1 The members of the Forum are currently-

- the **Notaries Society** (which represents 878 notaries);
- the **Society of Scrivener Notaries** (representing those notaries practising in Central London who have taken the additional examinations and other steps necessary to qualify as scrivener notaries);
- the **Law Society of Scotland** (representing all notaries in Scotland);
- the **College of Notaries of Northern Ireland** (representing all notaries in Northern Ireland).
- The **Faculty of Notaries Public in Ireland** (representing all notaries in the Republic of Ireland).

Observer status has been granted to notarial bodies in Jersey, Guernsey and the Isle of Man.

Contacts at an inter-professional level with notarial professions in other jurisdictions (both civil and common-law) have grown steadily.

2.2 The objectives of the Forum are:-

- to enhance the role and status of notaries within the system of civil justice and in the context of personal and commercial transactions of an international nature;
- to elaborate standards for the worldwide performance of the notarial function and, where necessary, advocate and seek legislative change;
- to provide information, encouragement and assistance to members and other notariats on a mutual and reciprocal basis;
- to represent and advance the interests of the profession of notary (but not individual notaries) with official bodies, such as administrators of justice, law societies, government departments and professional associations whether based in the United Kingdom or overseas.

2.3 The members of the Forum have adopted the principle of subsidiarity so that its deliberations and opinions are not directly binding on its members.

- 2.4 At an international level, the Forum has made representations to relevant European Parliamentary Committees concerning the status and authority of notaries in the United Kingdom and submitted memoranda for the consideration of the UINL (Union Internationale du Notariat), the world organisation for civil law notaries.
- 2.5 Schedule B describes the different types of notary in the UK and the procedure for their appointment.
- 2.6 Schedule C describes the rules and procedures for the training and qualifications of notaries throughout the UK.
- 2.7 Schedule D identifies the regulatory and professional bodies for notaries in the UK.

3.0 THE CURRENT ROLE OF NOTARIES IN THE LEGAL SYSTEMS OF THE BRITISH ISLES

3.1 England and Wales

3.1.1 International Functions

Notaries in England and Wales exercise the important public office and duty of preparing and authenticating legal documents creating or affecting rights, duties and obligations outside the United Kingdom. Their clients include Government departments and organisations, major industrial and trading companies and private individuals. Reliance is placed on the truth of the matters stated in notarial acts. In the oft-quoted words of Lord Eldon, "a notary by the law of nations has credit everywhere". (*Hutcheon -v- Mannington* (1802) 6 Vesey, Jun. 823). Indeed, the faculty which a notary receives on his appointment from the Archbishop of Canterbury concludes with the words "hereby decreeing that full faith ought to be given as well in judgment as thereout to the instruments to be from time to time made by you".

The notarial system is an integral part of the legal structure of jurisdictions founded on the civil law. Such jurisdictions include most of the United Kingdom's partners in the European Union. In those jurisdictions, the notary's intervention is necessary in order to complete many of the most important legal transactions. In England and other common law jurisdictions, the notarial system is less deeply rooted; notaries exist primarily in England to enable parties to authenticate documents or give effect to legal transactions in jurisdictions outwith the United Kingdom. This role, although limited, is an important one and in Central London the specialised services offered by the Scrivener notaries are an important factor in the City's position as an international trading and financial centre.

3.1.2 Internal Functions

Apart from the important function described above, a relatively restricted range of powers, duties and privileges is reserved by the English legal system to notaries.

These include the right to:-

- a) draw or prepare conveyancing documents (see Solicitors Act 1974, s.22) including any instrument for the purposes of the Land Registration Act 1925;
- b) draw or prepare any papers or instruments to found or oppose a grant of probate or letters of administration (see Solicitors Act 1974, s.23);
- c) take oaths and statutory declarations; and
- d) note or certify transactions relating to bills of exchange and other negotiable instruments (see Bills of Exchange Act 1882, s.51)

These rights are confirmed in relation to notaries by the Legal Services Act 2007.

With the exception of the noting and certifying of transactions relating to bills of exchange and other negotiable instruments, the exercise of the rights listed above is shared by notaries with solicitors and other authorised practitioners.

The United Kingdom government has acknowledged the need for the maintenance of a notarial system in England existing in its own right alongside the other two branches of the legal profession. The Courts and Legal Services Act 1990 greatly strengthened the position of notaries within the English legal framework and the Legal Services Act 2007 fully recognises notarial activities as a discrete branch of legal practice.

3.1.3 General Notaries

One or more notaries may be found in all significant centres of population and commerce. The great majority practise also as solicitors. The Notaries Society through its programmes of education and support for its members maintains the standards and independence of the general notarial profession throughout England and Wales.

3.1.4 Scrivener Notaries

The fact that for many years only Scrivener notaries were allowed to practise within the City of London and its surrounds had the effect of allowing a skilled full-time notariat to develop in this important financial and trading centre. By virtue of their training in foreign law and languages and the familiarity acquired through practical experience of procedures in countries overseas, scrivener notaries are qualified to handle legal matters spanning various jurisdictions. They prepare and authenticate documents in foreign languages in the form used in the country in which they are to be produced.

3.2 Scotland

3.2.1 The Role of the Notary in Scotland

Sixteenth century legislation provided important roles for the notary in relation to writs dealing with heritable property. The Subscription of Deeds Act 1540 required the subscription of a notary to a deed and the Deeds Act 1579 provided that "all writs importing heritable title or other bonds of obligations of great importance should be subscribed and sealed by the principal..." or "twa famous notars", whilst the Subscription of Deeds Act 1681 provided that the witnesses should hear the party give warrant to the notaries and in evidence thereof touch their pens.

3.2.2 Conveyancing Reforms

The requirement of touching the notary's pen was removed by the Conveyancing Act 1874 which provided that without prejudice to the previous law and practice, the deed having been read over to the grantor might be validly executed on his behalf if he were from any cause, permanent or temporary, unable to write by one notary or justice of the peace subscribing for him without touching the pen, or before two witnesses and obtaining a docquet in the form of Schedule 1 of the Act. The Conveyancing (Scotland) Act 1924 authorised notarial execution by a solicitor or notary public or justice of the peace or, in respect of wills or other testamentary writings, by a parish minister acting in his own parish or any minister of the Church of Scotland appointed to a charge to officiate as minister in any parish in which part of his charge is situated, provided certain statutory requirements are fulfilled. This provision has been modernised by the Requirements of Writing (Scotland) Act 1995 which authorises execution of a document on the behalf of persons who are blind or unable to write by

advocates, justices of the peace, sheriff clerks, solicitors and, for documents executed outside Scotland, notaries public or others with official authority.

The notary originally had a monopoly in relation to the preparation and execution of a number of deeds and, in particular, in relation to land transfers. Until recording of deeds was introduced in 1617, the notaries Protocol Book was effectively the only record of land transactions. The Titles to Land (Scotland) Act 1858 abolished instruments of sasine and rendered competent the recording of deeds de piano with warrant. Registration in this statutory form deprived the notary of much of his function. Further inroads into the use of notaries were made by the Titles to Land Consolidation (Scotland) Act 1868, the Conveyancing (Scotland) Act 1874 and the Conveyancing (Scotland) Act 1924 whereby notarial instruments and charters of progress were virtually abolished and notices of title and certificates of no surplus could be made not only by a notary but also by a solicitor.

3.2.3 The Notarial Protocol and Notarial Instruments

The early medieval notary held a pivotal role in the provision of evidence for the courts and the formulation of deeds and documents, the authenticity of which depended upon notarial involvement.

Many different types of deeds were executed by notaries including wills, wadsets, contracts of marriage, instruments of sasine and renunciations; all deeds which affected the transfer of property or wealth. It appears that most notaries would write an abbeviat of the actual deed or instrument. This would record the appearance of parties before the notary and any witnesses and provide a short statement of whatever transaction took place. This note would then be engrossed as a final instrument for execution. The instrument would then be recorded in the notary's protocol book. The protocol book eventually represented a record of all instruments made by the notary and was of great evidential value. Balfour in his Practicks records that "Ane instrument beand discrepant in divers substancial puntics fra the Notar's protocol-buke, makis na faith, quia magis creditur protocollo, quam instrumento".

The Notary's subscription and sign manual was an important feature; each was unique and the sign manual, described as a "seal in pen and ink instead of wax" could be quite elaborate incorporating, for example, heraldic devices. A stamp form of a notarial sign is recorded as early as 1557. Protocol books and notarial instruments were important aspects of medieval Scottish legal life. Balfour records a number of cases relating to the value to be ascribed to instruments and protocols. Protocols today can provide much in the way of useful historical, legal and sociological data to build up an accurate picture of life in Scotland during the Middle Ages.

3.2.4 Administration of Oaths

The administration of oaths has always been an important function of the notary. The Solicitors (Scotland) Act 1980, Section 39 provided that in any case where the administration of an oath or the receipt of an affidavit or solemn affirmation is authorised by or under any enactment it shall be lawful for the oath to be administered or, as the case may be, for the affidavit or affirmation to be received by a notary public. The provisions of Section 59 do not apply to any matter in respect of the preservation of the peace, a prosecution, trial or punishment of an offence, or any proceedings before either House of Parliament or the Scottish Parliament or any Parliamentary Committee.

3.2.5 Modern Day Function of the Notary

After a long period of decline during the nineteenth century, the late twentieth century has seen a resurgence in a requirement for the notary's services.

1. Oaths, Affidavits and Affirmations - One of the traditional functions of the Notary Public in Scotland which remains today is the acting where the legal validity of a document requires the administration of an Oath or the receipt of an Affidavit or solemn Affirmation. Under the Solicitors (Scotland) Act 1980, in such cases the Oath may be administered or the Affidavit or Affirmation received by a Notary Public. Such Affidavit or Affirmation should not relate to any matter in respect of preservation of the peace; a prosecution; trial or punishment of an offence; or any proceedings before either House of Parliament or the Scottish Parliament or any Parliamentary Committee.

2. Affidavits in undefended divorces - Following the Divorce (Scotland) Act 1976 it is no longer necessary to have parole evidence in undefended divorces. Instead, appropriate Affidavit evidence can be used. Such Affidavits or Affirmations are made before Notaries Public, which has increased the work undertaken by Notaries in recent years, as noted in the introduction.
3. Affidavits under the Abolition of Feudal Tenure etc. (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003 – Under these Acts there are various transitional provisions which require notices sworn before a Notary, including those relating to conversion and preservation of real burdens. These provisions have ended but notices of termination of real burdens under s20 of the 2003 Act must be sworn before a Notary.
4. Protests - where a protest is made in maritime matters, e.g. against poor wind and weather conditions a sea captain on arrival in a port, this is done before a Notary Public. Some Notaries retain protocol books for this specific purpose. In addition, when a protest is required for bills of exchange or promissory notes, this is also done before a Notary.
5. Foreign Documents - Many documents for use in foreign jurisdictions require execution or certification before a Notary and Notaries are frequently consulted by clients requiring documents authenticated in such matters, e.g. in the winding up of estates or in Court actions abroad. Powers of Attorney for use abroad often require to be executed before a Notary to constitute their validity.
6. Notarial Execution - Since 1540 Notaries have been empowered to sign documents on behalf of persons who are blind or unable to write. This has been a useful power frequently used by Notaries. Since 1st August 1995, the requirements and procedure involved have been simplified by the Requirements of Writing (Scotland) Act 1995.
7. Miscellaneous - Other less frequent functions can be noted including the entry of a person to overseas territories; completion of the documentation required for the registration of a company in certain foreign jurisdictions and drawing for repayment of Bonds of Debenture.

3.3 Northern Ireland

Notaries in Northern Ireland carry out much the same functions as their colleagues in England and Wales.

4.0 THE FUTURE ROLE OF UNITED KINGDOM NOTARIES

4.1 Digital Signature Authentication and the CyberNotary Project

For some years now, the English and Welsh notarial profession have been working towards developing a system to enable its members to conduct their business electronically using digital seals and signatures. In 2008 the Notaries Society was able to announce that its E Notarisation programme had been successful and the use of the technology was now available to all Notaries in England and Wales, subject to applying for and obtaining the necessary digital certificate. The system is based on the Adobe CDS solution and therefore should be compatible with most recipients around the world. Although other countries have adopted slightly different systems, much work has been done elsewhere to provide Notaries in other jurisdictions with the same capability. Whilst it will take some time for the market to catch up with available technology, English Notaries have begun issuing electronic notarial certificates and it is expected that the demand for these will increase as the savings in time and cost and the improvements to efficiency in the electronic system (without prejudicing integrity and security) begin to be appreciated. This is an evolving project and further refinements to the system are planned to include, for example, electronic signatures of the Appearers, as well as that of the Notary.

At the same time, English notaries have been working closely with the UK Foreign Office to introduce the electronic Apostille so as to ensure that the efficiencies of the electronic Notarial Act are maintained in cases where legalisation is required for countries who are signatories to The Hague Convention 1961. This follows the initiative taken by The Hague Conference to introduce the E Apostille some years ago. There is optimism that a system enabling the issue of electronic certificates of legalisation in England and Wales will be available by the end of 2009.

SCHEDULE A - HISTORICAL BACKGROUND

A.1 ENGLAND AND WALES

It has been suggested that notaries may have practised during the Roman occupation and have definitely practised in England since Norman times. In 1237 it was noted by the Papal General Council that there were then no notaries in England, but there is evidence that both papal and imperial notaries operated in England shortly after that time. By the fourteenth century the English King and his courts were seeking to anglicise the profession. The principal statute, the Ecclesiastical Licences Act 1533, delegated to the Archbishop of Canterbury the right to grant Faculties to Notaries which had previously been granted by the papal legates, a right which the King had taken for himself as part of the English Reformation. The existence and authority of the English notary thus arises in direct succession from the papal authority. It is earlier than the development of the English common law which marked the separation of the English legal system from the systems of other European countries.

Notaries have always been recognised as one of the legal professions practising in England and, until the rationalisation of the legal professions in the nineteenth century and the redistribution of tasks and of monopolies among them, notaries were largely concerned with the transfer of immovable property and with business contracts and transactions. The Notarial Profession is in fact the oldest of the 3 legal professions in England and Wales.

A full history of the profession will be found in *Brooke's Notary* (13th edition, 2009, Sweet & Maxwell).

The statutes directing and defining notaries in England and Wales are the Public Notaries Acts 1801 and 1843, the Courts and Legal Services Act 1990 and the Legal Services Act 2007.

A.2 SCOTLAND

1.2.1 Early Development

Notaries Public form a separate and distinct caste within the legal profession in Scotland notwithstanding that it has until recently been a condition precedent of admission as a notary public that one is first a solicitor. The ancient profession of notary public is internationally recognised and the development of that branch of the legal profession in Scotland shows strong and clear developmental links with the civil law legal systems of Europe.

A.2.2 Thirteenth and Fourteenth Centuries

It has been noted that only a few notaries were active in Scotland during the thirteenth century. 35 have been discovered performing a notarial function during the fourteenth century. During the early medieval period, notaries could either be created by the Pope or by the Holy Roman Emperor. A fair proportion of notaries held a joint commission from both authorities. There is evidence that the Pope delegated the rare right to create a notary in Scotland to, for example, the Bishop of Dunkeld in 1287 and, although the right does not appear to have been exercised for long, to the Bishop of Galloway in 1364. In the early fifteenth century, a Prior of St. Andrews had a mandate to create six notaries. This process of delegation to enable notaries to be created continued through the fifteenth century and into the sixteenth century.

A.2.3 Royal Notaries — the Fifteenth and Sixteenth Centuries

An Act of James III in 1469 stated that "Notaris and Tabelliounis sould be maid be the King and not be the Emperour". This assumption by the royal power of the control over the admission of notaries public settled the pattern for the future. Papal notaries were, by inference, restricted to dealing with matters within the sphere of spirituality.

The legislation of the mid-sixteenth century consolidated the law relating to the appointment of notaries. An Act of James V in 1540 relates to the "electioun and examinatioun of Notaris". Later legislation in 1555 states that "Notaris sould be examinat be the Lordis of Counsal and thair protocollis markit". In 1563, an Act of Mary Queen of Scots ordained that "no person tak upon hand to use and exerce the office of notarie, be na maner of creation, to be maid in onie time to come fra this day forth under the pain of death, without thae be maid and treat be the Queenis Majesties special letters and thereafter examinid and admitted to the Lordis of Sessioun and College of Justice quha sall tak thair aithes" for due and lawful using of the said office of notarie and cause to register "thair sign and subscriptioun" which they shall "use in all times after the said admission". In 1584, royal control over the notarial function was extended by a provision which prohibited Ministers from acting as notaries except in the making of testaments.

The Act of 1563 reiterated earlier legislation under James V and was later repeated under James VI in 1587.

James VI was concerned to regulate notaries and during his reign it was enacted that the admission of notaries should cease for five years and that none should be admitted thereafter except those who had a reasonable understanding of Latin and were otherwise capable. The Act further provided that the apprentice notary should serve seven years with a skilled legal practitioner prior to

admission and that the Master's testimony to the applicant's honesty and qualification was required by the Lords of Council and Session.

The procedure for admission remained substantially unchanged from 1587 until the late nineteenth century.

A.2.4 The Law Agents (Scotland) Act 1873

This Act provided that any enrolled solicitor could apply for admission as a notary and that the Court should admit him on payment of the appropriate stamp duty. The need to find caution which was imposed during the medieval epoch was abolished.

A.2.5 The Law Agents (Scotland) Amendment Act 1896

This Act provided that after a transitional period of one year, no person should be admitted as a notary public in Scotland until he also had been admitted as a law agent. Accordingly, no-one could be admitted to the office of notary as a separate and independent office after 14th August 1897. The provisions of the 1896 Act were re-enacted in 1933 in terms of the Solicitors (Scotland) Act 1933.

The legislation governing the admission of notaries remained in solicitors' legislation and was consolidated in terms of Part V of the Solicitors (Scotland) Act 1980 as amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. Section 57 of the 1980 Act provides that no person shall be admitted as a notary public unless admitted and enrolled as a solicitor.

Today, the responsibility for admission and registration of Notaries lies with the Council of the Law Society of Scotland under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. A petition to the Court of Session for admission as a Solicitor can include an application for admission as a Notary Public and, in practice, usually does. Since November 2007 only solicitors/notaries in possession of a practising certificate can act as notaries in Scotland: Legal Profession and Legal Aid (Scotland) Act 2007 Section 62.

A.3 NORTHERN IRELAND

The Government of Ireland Act 1920 was probably the key legislative element in the creation of Northern Ireland as a distinct political and legal entity. Historically part of the United Kingdom since the Act of Union of 1800, six of the nine counties of the ancient province of Ulster were formally designated as Northern Ireland, a province of the United Kingdom, in May 1921. Hitherto, applications for appointment as Notary Public were made by petition to the Lord Chancellor of Ireland. Authority to appoint and regulate Notaries Public was thereafter vested in the Lord Chief Justice of Northern Ireland when the province subsequently acquired its own Parliament and Supreme Court of Judicature in 1922(now changed to the Court of Judicature). For practical purposes therefore, the Notarial profession in Northern Ireland as presently constituted may be said to have commenced from that date. The College of Notaries Northern Ireland was founded in 1986 but authority to appoint and regulate Notaries Public in Northern Ireland remains vested in the Lord Chief Justice of Northern Ireland.

A.4 REPUBLIC OF IRELAND

In Ireland, a notary public is the holder of a public office appointed by law to carry out the duties and functions which by law and custom are associated with that office. It is an ancient and honourable profession. There is archival evidence that the office existed in Ireland in the 14th century. It probably existed earlier. Prior to the Reformation, appointments of notaries public (then described as public notaries) in Ireland were made by the Archbishop of Canterbury and the Archbishop of Armagh under papal authority and dispensations. After the Reformation persons appointed to the office of notary public received their appointments by royal authority from the crown and not by papal authority.

In 1871, under the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870, the jurisdiction previously exercised by the Archbishop of Armagh in the appointment of notaries was vested in and became exercisable by the Lord Chancellor of Ireland.

In 1920, the power to appoint notaries public was transferred to the Lord Lieutenant of Ireland. In 1924, upon the establishment of the Irish Free State (Saorstát Éireann) the power of appointment and jurisdiction over notaries public in the Irish Free State was transferred to the Chief Justice of the Irish Free State. In 1961 following the reorganization and reestablishment of the courts of Ireland the power to appoint notaries public became exercisable by the Chief Justice of Ireland. This continues to be the position in Ireland.

Notaries are not appointed for any term of years but at the pleasure (will) of the Chief Justice though it is customary for a notary to state that he or she has been appointed for life in order to distinguish the tenure of an Irish notary from notaries in other jurisdictions who may be appointed for a term of years renewable.

Notaries public are appointed for defined areas or districts – usually a county or a city and county but in recent times, because of population expansion and movement and the trend in establishing commercial and industrial enterprises outside cities and major towns, it has become the practice to seek appointment for a particular county and its bordering counties.

SCHEDULE B - APPOINTMENT OF NOTARIES

B.1. England and Wales

All notaries in England are appointed by the Court of Faculties of the Archbishop of Canterbury, in the exercise of the powers conferred by the Ecclesiastical Licences Act 1533. The Legal Services Act 2007 preserves the jurisdiction of the Court of Faculties over notaries and, in particular, empowers the Master of the Faculties to make rules for the education and training qualifications that prospective notaries must satisfy before admission. He will, however, be subject (in common with other legal professions) to the overarching regulatory supervision of the Legal Services Board established by the 2007 Act.

Notaries are established in all parts of England and Wales and their number and distribution is designed to meet public demand. A notary, once appointed, may practise without territorial restriction throughout England and Wales. Demand for notarial services is necessarily limited by the restricted, but nonetheless important, role which notaries play in the English legal system. However, the need for notarial services is rising and it is expected that, as English law develops towards harmonisation with European law and the profession of the English or Welsh notary approximates more closely with the notarial professions of other Member States, demand will increase further. As that demand grows there is likely to be an increase in the number of notaries who will practise only as notaries.

B.2. Scotland

All notaries in Scotland are admitted by the Court of Session under the Solicitors (Scotland) Act 1980. No person may be admitted as a notary public unless he has been admitted and enrolled as a solicitor, although under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 admission as a solicitor and as a notary public may be simultaneous. Any solicitor may apply to the Court of Session to be admitted as a notary public. The 1990 Act provides that the offices and functions of the Clerk to the Admission of Notaries Public and the Keeper of the Register of Notaries Public are transferred to the Council of the Law Society of Scotland.

The Law Society of Scotland is the regulatory body for solicitors and notaries in Scotland established under the Solicitors (Scotland) Act 1980. Since November 2007 only solicitors/notaries in possession of a practising certificate can act as notaries in Scotland: Legal Profession and Legal Aid (Scotland) Act 2007 Section 62.

B.3 Northern Ireland

Notaries in Northern Ireland are appointed by the Lord Chief Justice of Northern Ireland by virtue of the Judicature (Northern Ireland) Act 1978 which grants power to appoint an individual to act as Notary Public in Northern Ireland, subject to such conditions or limits as to territory, duration or purpose as may be specified in the certificate of appointment, and in accordance with the procedure prescribed by Order 107 of the Rules of the Supreme Court of Northern Ireland.

Appointment to the office of Notary Public must be preceded by six years' practice as a solicitor. Application for such appointment is in the form of a Memorial which shows: a) that the applicant is a solicitor of the Supreme Court of Northern Ireland; b) the place at which the applicant has practised as a solicitor for how long; c) the number of practising notaries in Northern Ireland; d) reasons why such appointment would be in the public interest.

The Memorial is accompanied by a certificate in support of the statements in the Memorial and confirming the fitness of the applicant, signed by "magistrates, traders and residents" in the district in which the applicant practises as a solicitor. A copy is served on all Notaries Public practising in Northern Ireland, any of whom may object to the proposed appointment.

The Memorial concludes with the request that the applicant be appointed "to practise throughout Northern Ireland". Although the Lord Chief Justice has the power to appoint notaries subject to such conditions and to such limits as to territory, duration and purpose as he may deem appropriate, a notary, whether appointed prior to the Judicature Act 1978 or pursuant to it, may as a general rule practise anywhere in Northern Ireland.

The College of Notaries Northern Ireland (c/o address below) is a collective body representing Notaries in Northern Ireland and members subscribe to its Code of Conduct. The College has an advisory function only as all executive power remains vested in the Lord Chief Justice. A current list of Notaries Public in Northern Ireland is available on the website of the Northern Ireland Law Society at www.lawsoc-ni.org

The appointment of a Notary Public in Northern Ireland is revocable and subject to modification at the discretion of the Lord Chief Justice. When a solicitor who is a notary ceases to practise as a solicitor, he must also give up his notarial practice.

B.4 Republic of Ireland

In Ireland, under the provisions of the Courts (Supplemental Provisions) Act, 1961, the power to appoint notaries public is vested in and exercisable by the Chief Justice sitting in open court. Application is by Petition supported by affidavit of the applicant exhibiting a certificate of examination and competency issued to the applicant by the Faculty of Notaries Public in Ireland and based on the results of the Faculty examination, a certificate of suitability and fitness signed by at least six solicitors practising in the area or district for which the applicant seeks to be appointed, and a similar certificate signed by at least six persons representative of the business community in the area or district concerned. The Faculty of Notaries Public and the Law Society of Ireland are notice parties to the hearing of the petition and may raise objections on appropriate grounds.

Pursuant to the Notaries Public Examination Regulations 2007, as amended, eligibility to sit the notarial examination of the Faculty is confined to a solicitor or barrister having not less than five years continuous post-qualification experience in the practice of the law.

A person applying to be appointed a notary public is required to include in the papers lodged in the Supreme Court Office, an undertaking to observe, if appointed, the Code of Conduct for Notaries Public of November 1986. On being admitted to membership of the Faculty of Notaries Public, the appointee becomes bound by the constitution of the Faculty and the Professional Practice Regulations for the time being in force.

SCHEDULE C EDUCATION AND TRAINING OF NOTARIES

C.1. England and Wales

C.1.1 Generally

The Notaries (Qualification) Rules 1998 made by the Master of the Faculties set out the present requirements for qualification as a notary in England and Wales. The Rules provide that no person shall be admitted as a notary to practise within England and Wales unless (1) he is over 21 years of age and satisfies the qualification requirements of the Rules; (2) takes the oath of allegiance and the oath required by section 7 of the Public Notaries Act 1843; and (3) is either a solicitor of the Supreme Court, a barrister at law or holds a degree. In addition to satisfying the above requirements, an applicant for admission as a general notary must first obtain various practical qualifications as specified in the Rules. These require that the prospective notary must have followed and obtained a satisfactory standard in a course or courses of study covering all the following subjects:

- (1) Public/Constitutional Law;
- (2) Law of Property;
- (3) Law of Contract;
- (4) Law of the European Union;
- (5) Roman Law as an Introduction to Civil-Law Systems;
- (6) Equity and the Law of Trusts;
- (7) Private International Law;
- (8) Conveyancing;
- (9) Business Law and Practice;
- (10) Wills, Probate and Administration;
- (11) Notarial Practice (including Bills of Exchange).

The University of Cambridge Postgraduate Diploma in Notarial Practice is designed to enable legally qualified applicants to qualify as notaries.

An application for admission must be accompanied by certificates of fitness and good character and an undertaking that the applicant will maintain professional indemnity insurance.

After admission the notary is required to undergo a period of practice under the supervision of an experienced notary for a period of at least two years. The supervisor is required to visit the newly admitted notary, to inspect his books and records and the transactions he has undertaken, to be available to assist and to advise; and to make a report to the Faculty Office.

After admission and during the period of practice under supervision the notary is also required to undergo continuing education at courses approved by the Faculty Office.

The Notaries Society also organises regular continuing education days and also an annual seminar/conference each year.

Special provision is made in compliance with Directive 2005/36/EC for the admission of persons holding the office of notary public in a Member State of the European Economic Area other than the United Kingdom; this special provision also applies to notaries qualified in Scotland and Northern Ireland.

C.1.2 The education and training of scrivener notaries

The training and examination requirements for prospective scrivener notaries are contained in the Scriveners (Qualifications) Rules 1998 made by the Court of the Company. The Rules were introduced with the specific purposes, among others, of enhancing the quality of notarial services in Central London by providing properly structured training for prospective scrivener notaries, emphasising the special skills of scrivener notaries, both linguistic and in the field of foreign law, introducing new skills and expanding the profession. The Rules also seek to encourage general notaries to become scrivener notaries by granting appropriate exemptions and introduce a greater level of uniformity among the profession generally in England and Wales by acknowledging the need for a common diploma. The more academic slant of the Rules (which among other things require candidates to pass examinations in foreign law relevant to notarial practice and two foreign languages) is also intended to align the profession more closely with its counterparts in Continental Europe.

C. 2 Scotland

C.2.1 The Solicitors (Scotland) Act 1980 (as amended)

In All inrant notaries in Scotland will be qualified as solicitors. practice, this means that they will:-

- (a) have completed an LL.B from a Scottish university;
- (b) satisfied examination requirements imposed by the Law Society of Scotland;
- (c) undertaken a post graduate diploma in legal practice; or
- (d) undertaken a two-year traineeship

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 provides that the offices and functions of:-

- (a) the Clerk to the admission of Notaries Public; and
- (b) the Keeper of the Register of Notaries Public are transferred to the Council of the Law Society of Scotland (the statutory governing body for all solicitors in Scotland).

Any petition to the Inner House of the Court of Session, whether made by the Council or the petitioner himself, for the admission of a person as a solicitor may, if so desired, include an application for that person's admission as a notary public and any order made on such a petition admitting that person as a solicitor may admit him as a notary public and direct the Council to register the petitioner in the Register of Notaries Public.

The procedure to be followed on an application for admission as a notary public is prescribed by the Rules of Court.

Once the petition has been granted, the Court remits the case to the Council or the Law Society of Scotland who marks the notary's protocol and takes the declaration *de fidele administratione*. The Society also enrolls the petitioner as a notary public. All petitions for admission as a notary public are Court of Session Inner House petitions and are often dealt with personally by the Lord President of the Court of Session (Scotland's highest Judge).

C.2.2 Removal from the Register of Notaries Public

The Act also provides for the removal from the Register of names of notaries public by Section 58 which provides:-

"1) In the case of any person who is both a solicitor and a notary public if his name is struck off the Roll of Solicitors or is removed from that

Roll in pursuance of an order under any provision of this Act, the Council shall forthwith give notice of the striking off or removal to the Keeper of the Register of Notaries Public who shall thereupon

strike the person's name off or, as the case may be remove it from, that register".

There are provisions for the restoration to the Roll of Notaries of a name of a solicitor who is subsequently restored to the Roll of Solicitors.

Questions have been raised as to whether suspension from the practice of a solicitor in Scotland imports that that solicitor remains entitled to act as a notary public. It would appear that is so, subject however, to the Rules of Court 1965 r.11 where it is provided that a solicitor who is struck off or suspended from the Roll of Solicitors may also be struck off or suspended by the Court from the Roll of Notaries Public. The provisions of s.58 would also fall to be applied in such a circumstance. There is judicial authority for the deprivation of the office of notary public of a solicitor who has been struck off the Roll of Solicitors.

C.3. Republic of Ireland

Before making application for appointment as a notary public, the applicant must have obtained a certificate of examination and competency from the Faculty of Notaries Public in Ireland in accordance with the Practice Direction of the Chief Justice made on 28 March 1994 pursuant to Order 127 of the Rules of the Superior Courts. This certificate is issued on the basis that the applicant has satisfied the Faculty upon examination that the applicant has acquired a sufficient knowledge of notarial law, practice and procedure to be a competent and efficient person to carry out the duties of a notary public. The examination is a written test at post graduate level in the subjects set down in the examination syllabus.

Pursuant to the Notaries Public Examination Regulations 2007, as amended, eligibility to sit the notarial examination of the Faculty is confined to a solicitor or barrister having not less than five years continuous post-qualification experience in the practice of the law.

The syllabus for the examination conducted under the Notaries Public Examination Regulations, 2007 (as amended) is as follows:–

1. History of the Notary Public in Ireland
2. Ethics for the Notary Public
3. Private International Law
4. Company Law
5. Mercantile Law: Bills of Exchange
6. Ships Protests
7. International Conventions and EU Directives affecting Notaries Public

8. Powers of Attorney

9. Foreign and inter-country adoptions

SCHEDULE D - REGULATORY AND PROFESSIONAL BODIES

D.1.1 England and Wales

The regulator for the whole of England and Wales is the Master of the Court of Faculties www.facultyoffice.org.uk, pursuant to the Ecclesiastical Licences Act 1533. His role as front-line regulator is confirmed by the Legal Services Act 2007.

The Master of the Court of Faculties has enacted Rules relating to:

- notarial practice (including compliance with anti-money laundering legislation)
- holding of client moneys
- requirements for indemnity and fidelity insurance
- discipline
- continuing education
- the safe-keeping of records
- qualifications, training and examinations.

D.1.2 The Notaries Society

The Notaries Society www.thenotariessociety.org.uk is open to all notaries holding a faculty to practise in England and Wales, and Associate Membership to persons who have signified their intention to obtain the recognised post graduate diploma in Notarial Practice and to qualified Notaries Public practising outside England and Wales. There are at present 866 notaries holding a faculty and practising certificate entitling them to practise in England and Wales of these there are 28 Scrivener Notaries. The rest are General Notaries. Of these, 878 are at present members of The Notaries Society including Associate Members.

D.1.3 The Society of Scrivener Notaries/ The Worshipful Company of Scriveners

The Society of Scrivener Notaries of London www.scrivener-notaries.org.uk is the professional body representing the interests of Scrivener notaries. The Society administers the London fidelity insurance scheme and the issue of certificates of remuneration in cases of disputed fees under delegated authority from the Court of Faculties.

The Worshipful Company of Scriveners www.scriveners.org.uk, a City of London livery company of ancient foundation, prescribes the qualification standards for scrivener notaries and sets the relevant examinations.

D.2.1 Scotland

The Law Society of Scotland www.lawscot.org.uk is the regulatory and professional body for all Scottish notaries public.

The Society maintains a master policy to indemnify clients and a compensation fund.

The Scottish Legal Complaints Commission has a statutory duty to investigate complaints against a solicitor/notary public (<http://www.scottishlegalcomplaints.com/home.aspx>)

D.3.1 Northern Ireland

The College of Notaries Northern Ireland.

D.4.1 Republic of Ireland

Notaries, on admission to practice, must become members of the Faculty corporation and, as such, subscribe to its Constitution (Memorandum and Articles), the Code of Practice for Notaries Public in Ireland (1987) and the Notaries Public Professional Practice Regulations, 2007.

The Professional Practice Regulations contain provisions for the investigation of complaints concerning notaries public, dispute resolution, sanctions for breaches of the professional practice code, the keeping of proper records and for continuing professional development.

Membership may be terminated on a number of grounds including having been found upon inquiry by the Professional Practice Committee (established under the Notaries Public Professional Practice Regulations), after due process, to have acted in gross disobedience of the professional practice regulations. A member who, being a solicitor, has his or her name removed from the Roll of Solicitors by order of a judge of competent jurisdiction may consequentially have his or her name removed from the Roll of Notaries Public and his or her membership terminated.

The Faculty corporation is managed by a Governing Council of eight elected members presided over by the Dean of the Faculty and reports to the members in general meeting. The day to day affairs of the Faculty are dealt with by the Registrar in consultation with the Dean and the Faculty Secretary.