



SUBMISSION OF THE FACULTY OF NOTARIES PUBLIC IN IRELAND TO THE LEGAL SERVICES REGULATORY AUTHORITY

1. INTRODUCTION

The Faculty of Notaries Public in Ireland ('the Faculty') refers to the email of Ms Natasha Lee from the Legal Services Regulatory Authority ('LSRA') to the Dean of the Faculty dated 8 May 2018 inviting the views of the Faculty on the topic of legal education and training. The Faculty welcomes the opportunity of making this submission to the LSRA.

2. FUNCTIONS OF A NOTARY

There is no statutory definition in Ireland of the functions of the notary; the notary's functions have evolved over the centuries. In this context, reference may be made to O'Connor, *The Irish Notary* (1987), Hall and O'Connor, *The Irish Notary: Supplement* (2007) and the forthcoming Hall and O'Connor, *The Notary of Ireland* (2018).

Based on research by the foregoing writers (and other authorities), the functions of a notary in Ireland may be stated to include:

- authenticating public and private documents;
- attesting and verifying signatures to documents in order to satisfy evidential or statutory requirements of foreign governments, overseas institutions and regulatory authorities;
- noting and protesting of bills of exchange for non-acceptance or non-payment; drawing up of ship protests;
- issuing certificates as to the acts and instruments of persons and their identities;
- administering oaths, taking affidavits and statutory declarations;
- drawing up documents of a legal or mercantile nature;
- taking evidence on commission for foreign courts, and

- making and verifying translations of documents from foreign languages to the vernacular and *vice versa*.

3. NUMBER OF NOTARIES PUBLIC IN IRELAND

The Faculty is comprised of c. 296 notaries public described in this submission as ‘notaries’ or individually as ‘notary’. Of the total number of notaries, 288 are solicitors (practising solicitors or retired solicitors), seven (7) are barristers and there is one (1) person who is not a solicitor or a barrister but who possesses significant degrees in law and was appointed before the Education, Training and Examination Regulations 2007-2014 (made by the Faculty) were amended to the effect that a candidate notary must be a practising barrister or solicitor with at least five years post-qualification experience.

The stipulation that a person must be a practising barrister or solicitor reflected the dicta of various Chief Justices and further reference is made below to the judicial dicta of the Chief Justices in this regard at paragraph 5.3.

4. ROLE OF THE CHIEF JUSTICE

4.1. *Statutory regulation*

The power to appoint notaries in Ireland is vested in the Chief Justice by section 10 of the Courts (Supplemental Provisions) Act 1961 and is exercised in accordance with the Rules of the Superior Courts.

Order 127 of the Rules of the Superior Courts,¹ which refers specifically to notaries, states:

1. The Chief Justice may, in the exercise of his discretion and from time to time, make such rules and regulations or give such practice directions, as he may think fit, as to the form and mode of application to be appointed a notary public.
2. Such rules, regulations or directions may require an applicant to satisfy the Chief Justice in advance of the appointment that he had the requisite and appropriate knowledge of notarial practice and procedure.

4.2. Practice Direction of Chief Justice

On 28 March 1994, a practice direction ('the 1994 Direction') was made by the then Chief Justice² under Order 127 of the Rules of the Superior Courts. The Direction stipulates that an applicant shall, before making application for appointment as a notary public, satisfy the Faculty that the applicant has a sufficient knowledge of notarial matters and procedures and of the particular legal provisions applicable to notarial matters to be a competent and efficient person to carry out the duties of a notary public if appointed.³

The Faculty holds an examination twice each year for the purposes of the 1994 Direction and, on the basis of such examination, issues a 'certificate of examination' to each applicant. An applicant who satisfies the Faculty in respect of the matters required by the 1994 Direction is granted a certificate from the Faculty to that effect. An applicant who fails to satisfy the Faculty as regards the matters required by the 1994 Direction will receive a certificate so stating. The certificate issued by the Faculty may be described as a 'certificate of examination' or a 'certificate of competency'. This certificate must be produced for the court record when an applicant applies to the Chief Justice to be appointed a notary public.

5. NOTARIAL PROFESSIONAL COURSE

5.1 Qualification Course

In November 2012, the Faculty established a qualification course (at post-graduate level) for candidate notaries. The course is conducted in accordance with the Notaries Public Education, Training and Examination Regulations 2007–2014 (as consolidated) ('the Education Regulations') and is administered by the Institute of Notarial Studies (a division of the Faculty) in accordance with these regulations.

The notarial professional course, consisting of lectures and tutorials given by practising notaries and other suitably qualified persons, is delivered in modules over one academic year (at present) and leads to the award of a Diploma in Notarial Law and Practice (Dip.Not.L.) by the Faculty to those candidates who, having completed the course to the Faculty's satisfaction, are successful in the Faculty Examination. [See paragraph 6 below.]

Personal attendance at a specified number of modules (seven at the time of writing) is obligatory under the Education Regulations. Examination scripts of participants are assessed by the examination body of the Faculty. A person to

whom a Diploma in Notarial Law and Practice is awarded by the Faculty will be entitled to receive a certificate from the Faculty for the purposes of the 1994 Direction. The Notarial Professional Course replaced the regime of study and training that was in place from 1994 up to the inauguration of the new course in 2012. As stated above, there are seven modules over an academic year held on one afternoon from October to April with the Faculty Examination in May and October.

5.2. *Qualifications of intending applicant*

Under the current Education Regulations, a person intending to apply to be appointed a notary shall: (i) be a practising solicitor or a practising barrister in good standing who, on the date of his or her application to sit the Faculty Examination, has not less than five years post-qualification experience in the general practice of law, at least two consecutive years of which shall be in the period immediately preceding the application; (ii) have successfully completed the Faculty's Notarial Professional Course and obtained a certificate from the Faculty to that effect;⁴ and (iii) have passed the Faculty Examination and received a certificate to that effect from the Faculty or the Institute on its behalf. A person who satisfies the foregoing criteria may thereupon proceed to petition the Chief Justice for appointment as a notary public.

5.3 *Rationale for professional legal qualifications*

The rationale for the professional qualifications cited in the previous paragraph is based on the dicta of several Chief Justices. Ó Dálaigh CJ in *Re Alfred J McKeon* (1965) stated in relation to members of the solicitors' profession in the context of an application to be admitted as a notary:

[T]he discharge of the duties of notary public may call for a range of knowledge which is assured by academic training which precedes admission to the solicitors' profession. The office of notary public is a high one in the field of international exchanges and its prestige will be safeguarded by a close adherence to the practice which my predecessors have established.⁵

This decision was followed by O'Higgins CJ in *Re James O'Connell* (1976)⁶ who accepted that the general rule was and ought to be as outlined by Ó Dálaigh CJ above.

Subsequently, Finlay CJ in an application to become a notary (described in the law report as in the Court of the Chief Justice) *Re Timothy McCarthy* (1989)⁷ agreed with his predecessors, Ó Dálaigh CJ and O'Higgins CJ, but developed the same concept significantly in the following manner:

I see no reason to depart from the general principles laid down in these two decisions [*Re Alfred McKeon* (1965) and *Re James O'Connell* (1976)]. If anything has occurred which might even marginally alter the situation as I would understand it, since these two decisions were delivered by my predecessors it is that a greater legal significance, I believe, attaches to the work of a notary in an expanding European situation. It is for that reason that recently in dealing with an application I expressed a view that even a fully qualified solicitor might be more appropriately an applicant to be appointed a notary public if he or she had a significant number of years' experience rather than being a newly-qualified solicitor.⁸

6. DIPLOMA IN NOTARIAL LAW AND PRACTICE

The Diploma in Notarial Law and Practice of the Faculty may be awarded to an applicant who:

- (1) has attended the designated number of modules of the Notarial Professional Course;
- (2) obtained a certificate of attendance at such course from the Institute of Notarial Studies; and
- (3) passed the Faculty Examination.

It is also possible for an already practising notary to obtain the Diploma in Notarial Law and Practice by attending the designated number of modules of the Notarial Professional Course, obtaining a certificate of such attendance from the Institute of Notarial Studies and passing an examination in the format for practising notaries prescribed by the Institute of Notarial Studies. The prescribed format at present is a dissertation on some aspect of international law, EU law or national law which has a particular application to or bearing on the office of notary.

7. FACULTY EXAMINATION

The syllabus for the Faculty Examination and the Diploma in Notarial Law and Practice for candidate notaries is currently as follows:

1. History of the Notary Public in Ireland;
2. Functions and Powers of the Notary Public;
3. Ethics for the Notary Public;
4. Code of Conduct for Notaries Public;
5. Private International Law;
6. Roman Law;

7. Aspects of Company Law and Practice;
8. General Drafting, including the drafting of legal documents used by the Notary Public;
9. Drafting of Notarial Certificates;
10. Bills of Exchange, including Noting and Protesting;
11. Ship Protests;
12. The Hague Convention of 5 October 1961 and other Conventions affecting Notaries Public;
13. eNotarisation and the proposed eApostille;
14. Powers of Attorney, including Enduring Powers;
15. Intercountry Adoptions;
16. Anti-Money Laundering legislation and the Notary Public;
17. Notarial Practice, including Oaths, Affirmations and Statutory Declarations: Substance, Form and Procedure;
18. Attestation, Authentication and Certification of Documents, Deeds and Transactions;
19. Keeping of Records by Notaries Public;
20. European Union and International Developments concerning the Notary Public;
21. Data Protection Law.

While there are twenty one areas of study covered in the syllabus above, there are only seven modules (one afternoon per month) in the academic year. Therefore, some modules cover several topics.

Some subjects may be covered in a law school of a university such as Roman Law although many law undergraduates do not study that subject today but it regarded as an important subject of study for the candidate notary as Roman Law is the basis for the Civil Law of Europe and elsewhere.

There is also the study of Company Law and Private International Law. The Faculty emphasises these topics are only considered on the Notarial Professional Course from the perspective of the legal work expected to be performed by the notary when admitted. There is no duplication of study in the context of any study carried out by candidate notaries in university or the professional law schools. Candidate notaries have varied in age from mid 20s to early 70s and the total focus of the modules is to prepare the candidate notary for his or her notarial functions.

8. APPLICATION FOR APPOINTMENT

Application for appointment as a notary public is made by way of petition (‘the petition’) addressed to the Chief Justice. The petition is filed in the Supreme Court Office. The petition sets out relevant details concerning the applicant (petitioner), including his/her home and business addresses, qualifications, facilities available, language skills, the grounds on which he or she seeks to be appointed a notary public and the administrative area, e.g. city or county including adjoining counties, for which the applicant seeks to be appointed.

The petition is verified by an affidavit sworn by the applicant (petitioner) in which is exhibited the certificate of competency for the purposes of the 1994 Direction and two certificates of suitability and fitness, one of which will be signed by at least six persons representative of the spread of businesses (commercial and professional) in the area for which the applicant (petitioner) seeks appointment and the other certificate by at least six solicitors practising in that area. In addition, the applicant must exhibit a ‘certificate of good standing’ obtained from the Law Society (solicitor applicant) or the Bar Council of Ireland (barrister applicant) and give a solemn undertaking to observe the Code of Conduct and Professional Practice Regulations of the Faculty, if appointed.

The petition is brought on for hearing by Notice of Motion (in which the Law Society and the Faculty are named as notice parties) returnable for the day appointed by the Chief Justice and published in the Legal Diary.

It is customary for petitions to be heard in the Supreme Court (of which the Chief Justice is president) and for the petitioner to be represented by counsel or a person having a right of audience before the superior courts.

A warrant of appointment under the seal of the Chief Justice is issued to the applicant (petitioner) whose petition is granted. Before the warrant of appointment is issued, the name and address of the successful applicant will be entered in the Roll of Notaries in the Supreme Court Office and a specimen of the appointee’s signature and official seal will be retained in the office for the purpose of carrying out subsequent verifications as requested.

REFERENCES AND ENDNOTES

¹ S.I. No. 265 of 1993.

² The Hon. Mr Justice Thomas A. Finlay.

³ Practice Direction is published on the website of the Courts Service.

⁴ Regulation 1(1) of the Education Regulations.

⁵ [1965] Ir Jur Rep 24.

⁶ Decision of O'Higgins, CJ, 21 June 1976, reported in O'Connor, *The Irish Notary*, p.170.

⁷ [1990] ILRM 84

⁸ Above at p.85.

Dated this 8th day of June 2018

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