

# NOTARIES

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## PRELIMINARY NOTE

### Classification

*Ecclesiastical Notaries.* Ecclesiastical notaries are appointed by the Master of the Faculties of the Archbishop of Canterbury for ecclesiastical purposes of the Church of England. There are few such notaries besides the registrars of ecclesiastical courts. Appointments are usually made as a matter of course if the applicant is personally suitable, and general and district notaries do not possess a right to be heard in opposition to the application (*Norwich Notaries, Eaton v. Watson*, [1904] W.N. 24). Such notaries need not serve an apprenticeship (Public Notaries Act 1801, s. 14, p. 1126, *post*), and may not take an apprentice (Public Notaries Act 1843, s. 2, p. 1131, *post*).

*General Notaries.* A general notary is a notary holding a faculty pursuant to the Public Notaries Acts 1801 to 1946, pp. 1121 *et seq.*, *post*, entitling him to practise (a) in all places in England and Wales including the area under the jurisdiction of the Scriveners' Company (as to which, see the Public Notaries Act 1801, s. 13, p. 1125, *post*), or (b) in all places in England and Wales outside that area.

A person is ineligible for admission as a general notary unless he has served a five-year apprenticeship to a practising notary pursuant to the Public Notaries Act 1801, s. 2, p. 1121, *post*, as modified by the Public Notaries Act 1843, s. 3, p. 1131, *post*, or unless he is subject to the Public Notaries (War Service of Articled Clerks) Act 1946, s. 1, p. 1135, *post*.

A person cannot be granted a faculty to practise within the jurisdiction of the Scriveners' Company unless he has taken up his freedom of the Company; see the Public Notaries Act 1801, s. 13, p. 1125, *post*.

*District Notaries.* In England a district notary is a solicitor appointed by the Master of the Faculties under the Public Notaries Act 1833, s. 2, p. 1128, *post*, to practise in a particular district outside the jurisdiction of the Scriveners' Company. No apprenticeship need be served before application is made for a faculty (Public Notaries Act 1833, s. 1, p. 1127, *post*).

In Wales and Monmouthshire, since 31st March 1920, the power of the Archbishop of Canterbury in respect to the appointment of notaries public to practise in districts wholly within Wales or Monmouthshire has been vested in the Lord Chancellor; see the Welsh Church Act 1914, s. 37, Vol. 10, p. 1449. The Lord Chancellor by Order dated 29th March 1923 appointed the Clerk of the Crown in Chancery to perform in that respect such functions as the Master of the Faculties would have been empowered to perform if the Act had not been passed. The Clerk to the Crown has issued the Notary Public (Welsh District) Rules 1924, respecting the admission of notaries; those Rules are not printed in the S.R. & O. series, and will be found in Brooke's Office and Practice of a Notary (9th Edn.) 435-440. For the fees chargeable in the office of the Clerk of the Crown in Chancery in respect of the appointment of Welsh District Notaries, see the Crown Office Fees (Warrants and Letters Patent, etc.) Order 1938, S.R. & O. 1938 No. 1222, and the Crown Office Fees (Welsh District Notaries) Order 1946, S.R. & O. 1946 No. 617.

*Notaries practising in places outside the United Kingdom.* Unless excluded under Dominion or colonial law the Master of the Faculties formerly had authority to appoint notaries to practise in a Dominion or colony; see the Ecclesiastical Licences Act 1533, s. 2 (repealed), Vol. 10, p. 28. The provisions of the Public Notaries Acts 1801 to 1946 (see the Introductory Note to the Public Notaries Act 1801, p. 1121, *post*) requiring an applicant for admission as a notary to be a solicitor or to have served an apprenticeship to a notary did not apply to these appointments, and the Master of the Faculties could at his discretion appoint a person who was not legally qualified; see *Bailleau v. Victorian Society of Notaries*, [1904] P. 180; *Fay v. Victorian Society of Notaries*, [1909] P. 15.

*Ambassadors, envoys, consuls, etc.* Although they are not notaries, British ambassadors and the other officials enumerated in the Commissioners for Oaths Act 1889, s. 6, Vol. 12, p. 859, are empowered by that Act to perform notarial acts abroad.

Documents purporting to bear the seal and signature of a person authorised to do notarial acts under that section are admissible in evidence without proof of the seal or signature or official character of that person; see s. 6 (2) of that Act, Vol. 12, p. 860.

### Discipline

The Court of Faculties has an inherent jurisdiction to remove a notary's name from the roll on proof of misconduct; see *Re Champion*, [1906] P. 86; *Re Prior, Ex parte Incorporated Society of Provincial Notaries of England and Wales*, [1908] W.N. 193 (fraudulent conversion); *Re Terrill, Ex parte Incorporated Society of Provincial Notaries Public*, [1908] W.N. 194 (forgery); *Re A Notary Public, Ex parte Incorporated Society of Provincial Notaries Public* (1908), Times, 19th December (fraudulent conversion).

Where a solicitor who is also a notary has been removed from the roll of solicitors by the Disciplinary Committee of the Law Society acting under the Solicitors Act 1957, Vol. 32, title Solicitors, the Court of Faculties regards itself

as bound to accept the findings of fact reached by the Committee (*Re Champion*, [1906] P. 86). The Court would not object to a notary adducing facts which had not been brought before the Disciplinary Committee or which had arisen since the decision was reached and which would alter the complexion of the case (*Re A Notary Public, Ex parte Incorporated Society of Provincial Notaries Public* (1908), Times, 19th December).

Except in a case of fraud no person who has been admitted and enrolled as a public notary is liable to be struck off for or on account of any defect in his articles of clerkship, or in the registry thereof, or in his service, or in his enrolment and admission unless application for striking off is made within twelve months from his admission and enrolment; see the Public Notaries Act 1843, s. 9, p. 1134, *post*.

The Court of Faculties must remove from the roll the name of a public notary who has acted as such or allowed his name to be used for the profit and benefit of an unqualified person, and a person whose name is so removed becomes permanently disqualified from acting as a notary; see the Public Notaries Act 1801, s. 10, p. 1124, *post*.

The Court of Faculties may, but need not, remove from the roll the name of a district notary who acts as such out of his district or within the jurisdiction of the Scriveners' Company, and a person whose name is so removed becomes permanently disqualified from acting as a notary; see the Public Notaries Act 1833, s. 4, p. 1129, *post*.

#### Notarial functions

As respects things done after 1st November 1949, a duly certificated notary public is one who either has a practising certificate issued by the Court of Faculties, or, if he is also a solicitor, has in force a solicitor's practising certificate which has been duly entered in the Court of Faculties; see the Solicitors, Public Notaries, etc., Act 1949, s. 1 (3), Vol. 32, title Solicitors. A Welsh District notary must register his annual certificate with the Crown Office; see the Notary Public (Welsh District) Rules 1924, r. 14. As from 1st November 1949, certificates ceased to attract stamp duty; see the Solicitors, Public Notaries, etc., Act 1949, s. 1 (3), Vol. 32, title Solicitors.

Duly certificated notaries public enjoy express exemption from the general statutory prohibitions against an unqualified person transacting certain legal business for fee or reward. They are thus entitled to draw or prepare any instrument relating to real or personal estate, or any legal proceeding (see the Solicitors Act 1957, s. 20, Vol. 32, title Solicitors); to draw or prepare any instrument of transfer or charge under the Land Registration Act 1925, Vol. 27, title Real Property (see the Solicitors Act 1957, s. 20, Vol. 32, title Solicitors); to take instructions for or to draw or prepare any papers on which to found or oppose a grant of probate or of letters of administration (see the Solicitors Act 1957, s. 21, Vol. 32, title Solicitors).

Notaries are empowered by the Statutory Declarations Act 1835, s. 15, Vol. 12, p. 808, to take declarations concerning actions or intended actions for debt or accounts brought outside the United Kingdom within the dominions of the Crown, or concerning property situated in such dominions. Under s. 16 of that Act notaries may take the declaration of an attesting witness to prove the execution of any will or codicil, deed, or instrument in writing. They may also take declarations, oaths and affidavits relating to stamps (Stamp Duties Management Act 1891, s. 24, and the Revenue Act 1898, s. 7 (6), Vol. 32, title Stamp Duties). None of the provisions referred to in this paragraph stipulate that the notary must be "duly certificated" at the time of acting.

The more distinctive functions of a notary are not regulated by statute,

namely, the preparation of deeds and documents to take effect in the overseas dominions of the Crown or in foreign countries; the verification and authentication of the execution of deeds, documents, contracts and powers of attorney; the authentication and verification of examined copies of documents; the preparation of bottomry and *respondentia* bonds, average agreements and other mercantile documents; the translation and verification of the translation of documents from English into a foreign language and *vice versa*; drawing of foreign bonds and debenture stock; acting as commissioners for oaths under Commissions granted by Commonwealth or foreign authorities.

Notaries are employed to present inland or foreign bills of exchange for acceptance or payment and to note and protest bills in cases of dishonour and to prepare acts of honour (see the Bills of Exchange Act 1882, ss. 51 (7), 94, Vol. 3, pp. 218, 236; and see generally, 3 Halsbury's Laws (3rd Edn.) 201-204). Another notarial function is the preparation of a "ship's protest" and protests concerning demurrage and other commercial documents (see, generally, 28 Halsbury's Laws (3rd Edn.) 120-122).

A notary public has an international status in consequence of which affidavits sworn before him and instruments authenticated by him are receivable as evidence in the courts of foreign countries (see, generally, 28 Halsbury's Laws (3rd Edn.) 122, 123).