

Written evidence from the Society of Scrivener Notaries

1. The Society of Scrivener Notaries ("the Society") is the professional body representing the interests of Scrivener Notaries practising in the City of London and beyond.

2. The role of Notaries in the English legal system

2.1 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 chiefly outside the United Kingdom. Their client's include government departments and organisations, major industrial and trading companies and private individuals. In the case of many legal documents executed in England for use overseas, authentication under the official seal of the notary is a pre-requisite to the acceptance of such documents by the judicial or public authorities of the jurisdiction in which they are to be produced. Throughout the European Union and beyond reliance is placed on the truth of the matters stated in English notarial acts.

2.2 The notarial system is an integral part of the legal structure of jurisdictions founded under the civil law, such jurisdictions include the majority of the United Kingdom's partners in the European Union as well as many jurisdictions with which the United Kingdom will be looking to enhance post-Brexit trading relationships. In these jurisdictions, the notary's intervention is necessary to consummate many of the most important legal transactions, notably dealings in land. In England and other common-law jurisdictions, the notarial system is less deeply rooted and notaries primarily exist to enable parties to give effect to legal transactions outside the United Kingdom. This role is nonetheless an important one and integral to the United Kingdom's status as a trading nation and in particular to the maintenance of the City of London as an international financial and trading centre.

2.3 Successive governments have recognised the need for the maintenance of a notarial system existing in its own right alongside providers of mainstream legal services. Notarial activities are designated as a "reserved legal activity" by the Legal Services Act 2007.

3. Appointment of notaries

All notaries in England and Wales are appointed by the Master of Faculties of the Archbishop of Canterbury in the exercise of the powers originally conferred on the Archbishop by the Ecclesiastical Licences Act 1533; his regulatory powers now derive from the Legal Services Act 2007.

4. Qualification of notaries

An applicant for admission as a general notary must first obtain the practical qualifications specified in the Notaries (Qualification) Rules 2013. 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: Public & Constitutional Law, Law of Property, Law of Contract; Law of the European Union, Equity and the Law of Trusts, Conveyancing, the Law and Practice of Companies and Partnerships, Wills, Probate and Administration, Roman Law as an Introduction to Civil-Law Systems, Private International Law and Notarial Practice.

In addition Scrivener notaries are also required to pass examinations and show proficiency in two foreign languages, in a foreign law relevant to notarial practice and in advanced notarial practice.

5. Regulation of notaries

The Legal Services Act 2007 maintained the regulatory role of the Master of the Faculties and, in common with other “front line” legal regulators, the Master’s regulatory functions are now carried on under the supervision of the Legal Services Board established by Part 2 of the Act.

6. Implications of Brexit for notaries

6.1 The issue of practising rights of lawyers in the EU, including temporary provision of services and permanent establishment, has not been a matter of concern to the notarial profession since, unlike solicitors and other legal professionals, notaries are excluded from the relevant EU Qualifications Directives.

6.2 The acts of English and Welsh notaries are accepted, recognised and relied upon throughout the European Union ensuring that our citizens who have commercial or personal business in civil-law Europe have access to appropriate notarial services. The need for the bridge provided by United Kingdom notaries between the common law and the civil law will be all the greater following Brexit both in relation to the European Union and with other jurisdictions where the United Kingdom will be seeking to enhance trading relationships such as Turkey, China and the Middle East.

6.3 Following the United Kingdom’s exit from the European Union the dominant legal system in the European Union will be the civil law. In fact, the Republic of Ireland will be the sole remaining common-law member State. The influence of the United Kingdom’s lobbying of the European Commission in the areas of legal regulation and general heightened market approach to the legal professions, including notaries, will be lessened and civil-law lawyers will undoubtedly seek to reassert their hegemony. In particular, the Society is concerned that, following Brexit, attempts may be made by European civil-law notaries to differentiate between the effects of the acts of civil-law and common-law notaries thus placing United Kingdom businesses and private citizens at a disadvantage in cross-border transactions involving European Union member States.

6.4 The recognition within the European Union and elsewhere enjoyed by English and Welsh notaries owes much to the fact that they are independently regulated and licensed by the Faculty Office of the Archbishop of Canterbury. Brexit makes it even more vital that such regulation and recognition is maintained both in relation to cross-border transactions involving remaining European Union members and other jurisdictions with which the United Kingdom will be seeking to enhance trading relationships with such as China, the Middle East and Turkey.

6.5 The Society is also examining the impact of Brexit on the EU Regulations currently in force in the United Kingdom relating to the cross-border enforcement of authentic instruments, general judicial cooperation in civil matters and, more generally, the consequences of Brexit for private international law in the United Kingdom as it affects notarial work. Notarial instruments in civil-law jurisdictions, in addition to their probative status, may currently be directly enforced in the United Kingdom as authentic instruments under the Brussels I regulation and subsequent recast. Such instruments are of course also enforceable in the United Kingdom under the Brussels Convention of 1968, the Lugano Convention of 2007 on

jurisdiction and the enforcement of judgments in civil and commercial matters (implemented in the United Kingdom by the Civil Jurisdiction and Judgments Act 1982 and subsequent legislation). These conventions will presumably survive Brexit although the Society reiterates its concerns as to the lack of reciprocity inherent in their provisions.

7. Implications of Brexit for the clients and staff of notaries

7.1 Scrivener notaries' principal clients include multinational corporations, financial, insurance and trading institutions as well as international law firms based in the City of London and any loss of "passporting" rights or restrictions on open access to European Union markets would undoubtedly result in many of these businesses seeking to relocate to other jurisdictions in the European Union with the resulting loss to the United Kingdom's economic interests. Members of the Society have already been informed by several major corporate clients that they will be closing their London offices and re-locating to another location in the European Union.

7.2 Given scrivener notaries important role in facilitating cross-border transactions both within and without the European Union, our members frequently recruit staff from European and other overseas countries in order to provide the knowledge of foreign languages and law which are required to provide cross-border notarial services. We believe that continued access to skilled overseas labour is important to our members and to the continuance of the City of London as an international trading and legal centre. Again our members have already noted that valued foreign members of their staff have experienced hostility following the Brexit vote and have genuine fears about their future status in the United Kingdom.

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