

The English Notarial Profession

The English Notary historically receives his certificate of appointment from the Court of Faculties of the Archbishop of Canterbury. At the head of the Court of Faculties is the Master who makes delegated legislation and thereby regulates the whole of the notarial profession, from the training and appointing to the disciplining of Notaries.

The English Notary authenticates and produces notarial acts by state authority. He is appointed on the basis of the Ecclesiastical Licences Act of 1533. The London Scrivener Notaries are mostly notaries-only, and some are foreign attorneys as well. They have the same authority as General notaries. The majority of General Notaries in England are solicitors rather than barristers.

1. Holder of public office

English Common Law prefers legal agreement to be executed in the form of a Deed, i.e. a form of legal certification with witnesses to the signatures (and historically with seals) and it is for this reason that in England a large part of the market for using Notaries is missing. Therefore the English Notary mainly deals with international business. Hence the English notarial act must not only be effective under English law, but it must also comply with the substantive and formal requirements of the particular recipient state to have effect.

The acts of English Notaries in England and Wales do not carry the same weight as those of Continental European Notaries. English Notarial acts are not “public documents” under English law, but they have been made to resemble public documents in substance and are recognised practically throughout the world as public acts.

In contrast to their German colleagues English Notaries are not empowered to notarise a document so that it becomes directly enforceable as a result of their acts of notarising the document. In addition the English Notary is not empowered to issue enforceable copies if required by a creditor.

2. English Notarial Practice

The English Notary is allowed to practise as a solicitor or indeed even in other non-legal professions unless his other profession creates a conflict of interests with his notarial obligations. If the Notary works alongside other solicitors, he has to ensure that his independence as a Notary is not compromised. In principle the English Notary is obliged to accept and carry out all instructions. Further he has to ensure that the legal public has access to him and therefore he has to arrange for a notarial colleague to act on his behalf if he is not available.

3. Areas of Activity of the English Notary

Apart from the fact that a foreign bill of exchange must be formally protested by a Notary, English law requires no compulsory involvement of a Notary. Therefore the English Notary is, as mentioned before, mainly committed to international business.

In the English legal services market Notaries are also engaged in the area of ship protests. A ship protest is a notarial act by which a captain records events which have led to damage to his ship or cargo.

The English Notary is also a Commissioner for Oaths and therefore authorised to administer oaths and to take statutory declarations.

Further the English Notary is involved in dealing with legal documents involving foreign law and/or foreign languages in the form of public acts, authentication of copies of documents, authentication of signatures of parties and witnesses and authentication of translations. He also issues certifications of notarial observations which go beyond merely observing the execution of documents. They include establishing legally relevant facts and relationships, for example the attainment of the age of legal majority, the capacity to marry, the resolutions of shareholders etc.