



FALKLAND ISLANDS

Notaries Public Rules 1992

(S.R. & O. No. 19 OF 1992)

ARRANGEMENT OF PROVISIONS

Rule

1. Citation
 2. Application
 3. Powers and authorities of notaries public
 4. Duties of notaries public
 5. Definition of "notarial act in public form"
 6. Definitions of "notarial act in private form" and "private documents"
 7. Duty of notary public to maintain protocol of documents in public form
 8. Provisions as to protocol on death of notary public or his ceasing to be notary public, etc.
 9. Property in protocol, etc.
 10. Evidence
 11. Essential requirements in relation to notarial act in public form as to execution of a document
 12. Fees
- Schedule



FALKLAND ISLANDS

Notaries Public Rules 1992

*[DATE OF COMMENCEMENT: 2ND OCTOBER 1992]
(Unless otherwise indicated)*

1 Citation

These Rules may be cited as the Notaries Public Rules 1992.

2 Application

These Rules apply to every person who holds appointment as a notary public under section 47 of the Administration of Justice Ordinance 1949 in relation to his capacity as such notary public.

[Revision w.e.f. 31/07/2017]

3 Powers and authorities of notaries public

Without prejudice to the generality of section 47 of the Ordinance (which provides that a person appointed under that section to be a notary public has all the powers and authorities of a notary public appointed under the law in England), it is declared that those powers and authorities include-

- (a) the preparation of documents of any kind intended to be used abroad;
- (b) the verification or authentication of documents intended to be used abroad;
- (c) the presentation for acceptance or payment of inland and foreign bills of exchange, noting and protesting such bills in case of dishonour and the preparation of acts of honour of such bills;
- (d) the certification as a true copy of any copy of a document which the notary has examined against the original of that document;

- (e) the taking of affidavits, oaths, affirmations and statutory declarations for use-
 - (i) in the Falkland Islands (where the notary shall have all the powers and authority of a person appointed as a commissioner for oaths under the Commissioners for Oaths Ordinance 1969);

[Revision w.e.f. 31/07/2017]

- (ii) abroad.

4 Duties of notaries public

- (1) Subject to subsequent paragraphs of this rule, a notary public shall faithfully make contracts or instruments for or between any party or parties requiring the same.
- (2) A notary public shall not attest a deed or other document of any kind to which he is a party or under which he or any partner of his has acquired or is likely to acquire an interest.
- (3) A notary public is not obliged to undertake to do any notarial act or thing where he believes-
 - (a) that he cannot conveniently do that act or thing with reasonable expedition;
 - (b) that the interests of any party requesting him to do that act conflict or may conflict with that of his own or of any partner of his; or
 - (c) that the act or thing is required to be done for some dishonest purpose.
- (4) In his capacity as a notary public a notary public shall use such skill and ordinary care and diligence as persons of ordinary capacity and prudence engaged in the profession of notary public might be expected to employ.
- (5) Without prejudice to paragraph (4) a notary public shall carefully verify the identity and capacity of persons requesting him to issue certificates or instruments for their use or benefit.

5 Definition of "notarial act in public form"

For the purposes of these Rules, a "**notarial act in public form**" is an instrument-

- (a) in narrative form, commencing with a preamble in which the notary public recites the appearance before him of the parties, their personal capacities and the capacities in which they act;
- (b) concluding with a statement (the eschatocol) that the instrument was read over to the parties, signed, and where appropriate, sealed by them, in his presence;
- (c) if witnesses are present and it is desired to record that fact, containing a statement as to that fact,

and a "**public document**" is a document incorporating or having endorsed or annexed to it a notarial act in public form.

6 Definitions of "notarial act in private form" and "private documents"

For the purposes of these Rules "a notarial act in private form" is a certificate or attestation under the hand and seal of a notary public appended to or placed on a private document signed by one or more of the parties to it, and a "private document" is any document in respect of which the notary public performs a notarial act in private form and does not perform a notarial act in public form.

7 Duty of notary public to maintain protocol of documents in public form

(1) Every notary public shall maintain a protocol (that is to say, an archive) and is responsible for the proper keeping and safe custody of that protocol.

(2) In his protocol the notary public shall keep an original of all documents in respect of which he does a notarial act in public form. Every such public document shall be preserved in the protocol in chronological order and numbered sequentially.

(3) The notary public shall deliver a duplicate original of every public document to the party at whose request he performs the notarial act in public form.

8 Provisions as to protocol on death of notary public or his ceasing to be notary public, etc.

(1) When a notary public dies his protocol shall be delivered into the custody of such other notary public as the Supreme Court may direct and the notary public's personal representatives shall comply with any such direction.

(2) When a notary public proposes to relinquish his appointment as such or to leave the Falkland Islands permanently he shall notify the Chief Justice in writing of that fact and the Chief Justice shall direct the notary public to deliver his protocol to such other notary public as he shall name and the notary public shall comply with that direction.

9 Property in protocol, etc.

(1) A notary public shall have no property in his protocol and shall be deemed at all times to hold the same upon trust for Her Majesty.

(2) A notary public's protocol is not liable to distress or execution of any kind.

10 Evidence

(1) A document purporting to have affixed or impressed thereon the seal and signature of a notary public shall be admitted in evidence in every court in the Falkland Islands without proof being required that the seal and signature is that of the notary public.

(2) A certificate bearing the signature and seal of a notary public if it is a notarial act in public form and verifies that the document on which it is endorsed or annexed or to which it refers was executed in his presence and by the persons named as having so executed it in the manner specified in the certificate, shall in every court in the Falkland Islands, and unless the contrary be proved, be conclusive evidence that the document was so executed.

(3) Where a certificate bearing the seal and signature of a notary public states that the document on which it is endorsed or annexed is a true copy of a document in the protocol maintained by the notary public or that of another notary public of which the certifying notary public has custody under rule 8 or of an original document at the time of the certificate otherwise in the possession of the notary public, the copy document bearing that certificate may be admitted in evidence in any court in the Falkland Islands to the same extent as the original document would be so admissible.

(4) Where a declaration made before a notary public is recorded in a protest attested by the certificate of a notary public under his seal and signature as having been so made and that certificate appears to a court in the Falkland Islands to be contemporaneous with that declaration, the court shall admit that certificate as evidence that the declaration was made and that the declaration is correctly and sufficiently recorded in the protest, any averment subsequently made by the maker of the declaration or any other person to the contrary notwithstanding. But the certificate is not evidence of the truth of the matters recorded in the declaration as having been averred by the maker of the declaration.

11 Essential requirements in relation to notarial act in public form as to execution of a document

A notarial act in public form as to the execution of a document must contain the following:

- (a) the full name of the notary public;
- (b) a statement that the notary public holds appointment under section 47 of the Ordinance;
- (c) the full names of the signatories and the capacity or capacities in which they have executed the document (that is to say, whether on their own behalf or in an official or representative capacity);
- (d) a statement authenticating the signature of the parties and, where appropriate, indicating what evidence has been produced to the notary public-
 - (i) as to their identity (but a statement that any party to the document named in the statement is to the notary public well and personally known is sufficient compliance with the requirement); and
 - (ii) as to the capacity in which they execute the document;
- (e) the place and date of issue of the certificate; and
- (f) the seal and signature of the notary public.

12 Fees

(1) The fees specified in the Schedule to these Rules may be charged by a notary public.

(2) Where a notary public is in the full-time employment of the Crown he shall pay any fee charged by him under these Rules into the Consolidated Fund but such a notary public may in his discretion waive payment of any such fee or reduce them if-

- (a) he believes that the fee would otherwise be payable out of the Consolidated Fund or out of moneys appropriated by the Legislative Council; or
- (b) he considers that, having regard to all the circumstances of the case, hardship would otherwise be caused to the person obliged to pay any such fee; or
- (c) he believes that the fee would otherwise be payable in respect of a document required for a charitable purpose.

SCHEDULE

[S. 15/Ord. 5/16/w.e.f. 1/7/16, and S. 25/Ord. 11/19/w.e.f. 1/7/19.]

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| 1. For every affidavit and exhibit to an affidavit | £10.00 for every affidavit and
£5.00 for every exhibit thereto |
| 2. Preparing a Note of Protest or other document
(including any certificate thereon) | £103.00 for every hour engaged
therein and proportionately for
every part of an hour, with a
minimum fee of £50.00 |
| 3. Preparing and attesting any notarial act | (a) £36.00 if a notarial act in
public form;

(b) £26.00 otherwise
(but no fee where Fee 2 is
charged) |
| 4. Extending a Protest | £103.00 |
| 5. Examining any document with the original thereof and
certifying it as a true and correct copy | (a) if not copied by the notary
public, £26.00 plus £5.00
for every page

(b) if copied by or under the
supervision of the notary public,
£26.00 plus 50 pence for every
page |
| 6. Attending to Protest a Bill of Exchange or Promissory
Note | £103.00 and proportionately for
part of an hour thus engaged plus
reasonable travelling expenses
incurred (if applicable) with a
minimum fee of £50.00 |
| 7. Any other notarial act done by a notary public | £103.00 |