## *Comments on the Government's draft amendments to the Act : why now?*

(draft amendments published in August 2007 for public consultation)

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***Treaty obligations:*** From the end of 2007 the Architects Act 1997 will have been extensively amended by regulations made by a minister of the UK government under section 2(2) of the UK European Communities Act 1972. This amendment will have been made pursuant to the current European Directive 2005/36/EC (alias EC/36/2005) and treaty obligations binding upon the UK and other states of the European Union. In that respect, amendment was inevitable and inexorable, and consequent upon the restrictions applying (for well over 60 years) to the use of the simple word "architect" in connection with the statutory Register, operated under Westminster legislation by which the executant body was renamed as the Architects Registration Board from 1997 (previously Architects' Registration Council of the United Kingdom). The amendment contrives to add many pages of complicated text to a piece of legislation which was otherwise tolerably trim, neat and comprehensible in its consolidated form in the 1997 Act.

***Impact:*** Many practitioners will have paid little attention to the amendment beyond noticing that it is likely that there will be a commensurate need to expand the human and other resources employed for giving effect to the additional activity prescribed for the Board to perform; and that the impact upon the annual fee which the Act enables the Board to demand is unlikely to be favourable to architects in this country who, by application or retention, choose to become registrants on what will in future be "Part 1" of the Register. The general effect on teaching and practice, or on the inter-disciplinary process in the service of the built environment, is uncertain.

***Problematic:*** The amendment may be seen as no other than a neutral and painstaking legal draftsman would have to compose, given the EU treaty obligations and the continuance of the statutory Register of Architects which the profession had wished upon itself over ten years ago, combined with the unequal standard of qualification currently operative, which has been mentioned elsewhere. (See **An unequal standard across Europe**).

But, seeing that the Schedule headed "*Visiting Architects from Relevant European States*" alone occupies more than six pages of the amending regulations, it is evident that this has been a costly exercise, begging the question: at what point does yesterday's solution become the problem of today or tomorrow, in view of the nexus (currently acknowledged by government policy affecting departmental operations) between regulatory activity and the burdens of information requirements, particularly involving NDPBs and third sector activities? Is it a practical way of enabling the profession to give of its best in the modern world by way of education and practice, or is it a device of economic protection in need of regulatory reform?

For instance the issue is much more problematic than could be solved by brand or business differentiation alone, or some other device of the theory and practice of brand architecture, the importance of which has come to be widely acknowledged, and has been helpfully described by the firm "Interbrand" (of Omnicon's "Diversified Services Agency"), which has a claim to be considered "one of the world's leading consultants in brand strategy, valuation and naming".

***NDPB:*** The Board has been classed as a "Non-Departmental Public Body" in the language being used by government departments (CABE, now a statutory corporation under an **Act of 2005**, is another). The majority of the Board is appointed by one such department; and it has been assigned

the function of the "competent authority" which has to be designated by every EU state. Architects will be aware that, under the present regime, the Board has been allowed pretty much free rein to expand its activities with the paraphernalia of a logo for registrants, third party reviews, bulletins and whatnot.

***EU methods:*** Unlike this country, most of the states of the Union have the distinction of being founded as sovereign and constitutional republics or kingdoms in or after the nineteenth century, as successors of earlier ones or as seceders. They are habituated to applying the acquired skills of state bureaucracy for directing, managing or controlling activities within and across the borders of their territories, adapted to their particular needs, policies, histories, traditions and cultures, to which has been added the declared treaty aim of developing an "internal market" and participating as an "ever closer union" in the global economy and world community. This has meant that responsible policy-makers have had to consider what the Board can now be given to do.

***Disadvantage:*** There may have been undeclared assumptions about present or future policy benefits for the profession or for others. But a critic could claim that the persons most likely to be disadvantaged are those who have qualified in this country and wish to carry on practice here using the title "architect"; and the only persons likely to be advantaged are those who derive satisfaction from their responsibilities as appointed members of the Board (who cannot themselves be practising architects), or others who are in competition with architects whose profession has been trammelled in this way by what amounts to an ineffectual restrictive practice which criminalises certain uses of an ordinary English word, and could be styled "coercive coaxing".

***Timely:*** The good news for the profession and its friends and clients at home and abroad, for the general public and for policy-makers in European Union and other states is that from July 2007 the RIBA has made timely arrangements for a voluntary register of Chartered Practices, and for International Chartered membership: for preamble to the RIBA Charter go to **RIBA Charter and Byelaws**; for Status of the ARB, Part 2 para.1 go to **Status of the ARB**.

***Recognition:*** The Directive was dated 7 September 2005 and headed "on the recognition of professional qualifications". An understanding of its origin and purport requires, among other things, knowledge of the information set out in its preamble. A certain anomaly is mentioned in paragraph (12) (page 34 of the Departmental consultation document given limited publicity in late August 2007) which reads as follows:

> *"(12) This Directive concerns the recognition by Member States of professional qualifications acquired in other Member States. It does not, however, concern the recognition by Member States of recognition decisions adopted by other Member States pursuant to this Directive. Consequently, individuals holding professional qualifications which have been recognised pursuant to this Directive may not use such recognition to obtain in their Member State of origin rights different from those conferred by the professional qualification obtained in that Member State, unless they provide evidence that they have obtained additional professional qualifications in the host Member State".*

***Registered architect:*** Forward-looking policy-makers will have seen that ways of resolving the anomaly will be open to fresh consideration now that this stage has been reached. One way would be by further amending the present Act so that restriction is re-applied to the use of the specifically descriptive term "Registered Architect", as in the originating legislation of 1931. It is known that the Board has helpfully expressed support for use of "Registered Architect" as a distinguishing style or title for registered persons. That would relieve the Act of restricting the use of the simple word "architect" in a way which is uniquely confusing and ineffective, and which now gives legislative force to hidden ambiguities generated by the two-tier system consequent upon

accommodating the EU method of operation mentioned above: *An unequal standard across Europe*.

If the Register of Architects is to have a future this can be simply to serve as a government office for such certifying functions as may be inevitable in this country pursuant to EU obligations, while chartered bodies are left free to set their own qualifying standards for membership.

***The public:*** It must have been a challenging task for responsible policy-makers to do justice both to the general public and to architects, wherever they have obtained their formal qualifications. Independent observers may see (as had the author of the Warne Report which preceded the amending legislation of 1996) that the public is best served by means of statutory regulations of universal application (such as Building Regulations) on the one hand and arrangements free from the taint of monopoly (such as have been made by the RIBA for Client Design Advice) on the other.

An AARUK contributor, *25 September 2007*.

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