Architects Act 1997 – Analysis, with some passing remarks and questions for policy-makers

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Conciseness - Originating act, 1931 - Amending act, 1996 - Consolidation act, 1997

Note 1: *"Standard required" to be ascertained in professional practice, not prescribed for ARB's convenience - Exposure to obloquy.*

Scheme of the Act - General burden, voluntary burdens - Statutory choices - Third party burden on Schools - ARB's supra-statutory claim against registered architects.

Architecture, activities in the field of architecture, architectural services - Mentioned but not defined

Note 3: *New specialisms - Commercial, iconic or domestic values - Information for others - Relevance of "architect" as restricted title.*

Government appointed majority

Note 4: *Momentum of ARB's expansive tendency - Annual reports claiming ARB exalted to status of regulatory authority for the profession with "extensive powers".*

Standard 8 - ARB's overbearing pretensions - PCC and natural justice.

The Architects Act 1997 is fairly short as Acts go. That is partly due to its conciseness, but this quality makes it all the more necessary to remember that the Act must be read as a whole to ascertain the meaning and effect of its various parts. Care is needed not to read into it what is not there (whatever conventional wisdom may have supposed or desired), and not to fail to notice what actually is there. In particular, like many such Acts, it can be better understood by looking at its beginning (Arrangement of Sections and long title) and its end (derivations), as well as the operative part in between.

Its long title is "An Act to consolidate the enactments relating to architects". The Table of Derivations printed at the end lists the enactments which it consolidated; and Schedule 3 lists the originating and two amending Acts which it repealed, namely: the Architects (Registration) Act 1931, the Architects Registration Act 1938 and parts of the Housing, Grants Construction and Regeneration Act 1996.

The unbroken continuity of these enactments is shown by paragraph 19(2)(a) of Schedule 2: "the Council" means the Architects' Registration Council of the United Kingdom established under the 1931 Act, which was renamed as the Board by section 118(1) of the 1996 Act.

The changes made by the 1996 Act to the originating Act as amended can be deduced from the Table of Derivations. This also shows that, for the purpose of the consolidation, certain definitions were inserted in the "Interpretation" section. These included one to make clear that where there is a reference to "unacceptable professional conduct", it has the same meaning as it has in section 14 (not vice versa). In section 14 (1) the phrase is expanded as: "conduct

which falls short of the standard required of a registered person".[1]

The scheme of the Consolidation Act of 1997 is identical with that of the originating Act of 1931, as amended. It is as follows:

It operates by imposing (under Part IV) one kind of burden, backed by threat of penal sanction, on persons carrying on business in the United Kingdom generally, but at the same time giving to one particular group of persons a statutory right to choose instead to submit to another kind of burden, and to another group of persons the statutory right to choose to submit to a third kind of burden.

Here, we describe the first as the "general burden"; the other two as the "voluntary burdens"; and the freedom to choose the "statutory choices".

The general burden is a prohibition imposed on all persons, firms, partnerships and bodies corporate carrying on business in the United Kingdom, including architects and Chartered Architects. The prohibition is against practising or carrying on business under the title of "architect", with two exceptions, viz.:

1. In the case of an individual, s/he has opted for one of the voluntary burdens and is registered or enrolled under the Act.

2. In the case of a business entity (body corporate, firm or partnership) it has opted for the other of the voluntary burdens, in that its business so far as it relates to architecture satisfies the statutory requirement to be under the control, management and supervision of a registered person.

Here, we describe the first of these as a "practice volunteer", and the second as a "business volunteer".

The statutory choice is exercisable:

1. In the case of a practice volunteer, by applying for registration in the Register of Architects and paying the annual retention fee (under sections 4 to 11), or by enrolling in the statutory list of visiting EEA architects (under section 12).

2. In the case of a business volunteer, by complying with the control, management and supervision requirements (of section 20(3)).

The voluntary burdens which result from the exercise of the statutory choice are as follows:

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1 That has no further explanation, but the context shows clearly that the ARB itself has been given neither a legislative nor a discretionary power to impose such a required standard for professional conduct. It is not, for instance something which the ARB has prescribed or declared for its own administrative purposes.

According to this reading of the Act, the source of such a required standard will be found elsewhere, that is, it must be present in the field of architecture and the supply of architectural services by architects in practice; and (for the purposes of disciplinary proceedings) it must have been properly identified to an accused person before the Professional Conduct Committee can hold the person liable to any of the "disciplinary orders" listed in section 15(2), and to the obloquy of being publicly denounced by that body (on the ARB website) for having been found guilty of "unacceptable professional conduct°.

This is an instance where the conciseness of the drafting could produce a misunderstanding, and have a less than satisfactory outcome in view of the formidable penalties to which registered persons are exposed at the mercy of the ARB's PCC, with no practical means of redress against a misguided decision.

1. In the case of a registered person, to submit to the regime imposed on registered persons under sections 4 to 11 of Part II (payment of fees and satisfying requirements about qualifications and competence) and Part III – Discipline.

2. In the case of a person enrolled in the list of visiting EEA architects, to submit to the regime of section 12 and of Part III – Discipline.

3. In the case of a business volunteer, to submit to the regime for the control, management and supervision imposed by section 20(3) and be liable to supply the Board with information showing compliance.

In consequence: (1) any person or business entity is free to supply services of the same kind as a registered person, but may only use the title "architect" in this connection subject to one of the voluntary burdens; and (2) a Chartered Architect may only use this title in the course of professional practice if s/he has opted to submit to one of the voluntary burdens, normally as a registered person.[2]

A side-effect of the Act is the imposition of burdens on third parties under Part II, namely, Schools of Architecture, but the effect of the changes made by the 1996 Act is that Schools of Architecture have disappeared from the legislation without trace. The result has been a certain amount of wrangling between the Schools, the ARB and the RIBA which is the principal professional body, whose concerns inevitably include architectural education.

Another side-effect has been a claim by the ARB to be able to impose on registered persons certain requirements about PII. The claim is opposed as being extra-statutory, but supported as being supra-statutory, that is, a superstructure based on an invisible statutory foundation, designed with "legal advice". With an air of mystification the "legal advice" is claimed by the ARB to be too secret ("privileged") to be revealed to disbelieving registered persons. This is examined in further detail below.

"Architecture" and "Architectural services" are mentioned but not defined by the Act, but it is quite obvious that Parliament has not delegated to the Board the power to define these.[3]

The membership of the Board is the result of one of the changes made by the 1996 Act to the

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2 *– Do responsible policy-makers consider that the awkwardness of this arrangement is sufficiently outweighed by its usefulness, to architects, their competitors, the users of architectural services or the general public?*

3 In practice, as technology and the building process continue to evolve new specialisms, the concept of architecture can be seen as becoming ever more fluid, extensive and comprehensive, and at the same time becoming narrower while ever more ancillary specialities are identified.

If statutory controls of general application, such as Building Regulations and land use and investment legislation, are taken out of the equation, what is left as exclusive to architecture is the exercise of creative imagination beyond the ordinary to devise for any given project something that satisfies today's commercial or iconic or domestic values, and the capacity to convert that into information which others can use for the purposes of evaluation and for building works.

– Do responsible policy-makers consider that the threat of prosecution for using the title "architect" while unregistered makes sense any more?

– Do they consider that the future of architecture, or architectural education, or the RIBA, depends upon it?

registration body's previous constitution when its name had been the Architects' Registration Council of the United Kingdom. The Act abolished the Board of Architectural Education, renamed the Council as the Board, and made this Board consist predominantly of persons appointed by the Privy Council department.[4]

In the course of its self-development, the ARB has shown too little regard for natural justice towards architects.

The conduct by the ARB of certain cases against architects has called for renewed scrutiny of Part III-Discipline, sections 13-19. These include penal provisions against architects. The law tends to construe penal enactments narrowly, and is disinclined to accept the pretensions of statutory bodies in favour of an injustice against blameless individuals in the absence of clear words to that effect. There are certainly none here.

Part III must be interpreted with the rest of the Act as it stood when first enacted in 1996/1997. It was then prescribed (by section 1(4) and Schedule 1) that the Professional Conduct Committee must consist of 4 of the elected members of the Board (registered architects elected by registered architects), 3 of the members of the Board who had been appointed by the Privy Council department, and 2 who had been nominated by the President of the Law Society; and that the quorum (for a hearing) must be one of the elected, one of the appointed and one of the nominated. (A change which came into operation in 2004 cannot affect the purport of Part III as enacted.)

Normally, the inclusion of Board members need not be regarded as objectionable. The legislation stated beyond doubt that the Board is not being given, by way of the Code or otherwise, a power to impose on registered persons a duty to assist the Board by giving information, in the name of "monitoring", or otherwise in connection with a Code Standard, such as the Standard 8 Statement.

But the Board, as a matter of its own policy, has notified registered persons to the effect that they are required to complete the Standard 8 Compliance Statement and refusal to do so makes a person liable to a finding of guilty by the PCC, and liable to penal sanction.

The Board's conduct thereafter has been consistent with an attempt to have registered persons, the PCC and others believe that simply using the word "require" in the Board's

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4 It had the effect of introducing a flaw into the Act as a whole, which some would call latent and others patent. It was through this weakness in the structural design of the Act that Dr Kelly, CBE, one of the newly appointed members and the first chairperson, was able to lead and drive the Board with such headstrong gusto, that even now the Board is undergoing some difficulty in overcoming the momentum of its misdirection, and friendly relations with the RIBA remain in jeopardy.

Her Annual Reports revealed an unflinching determination, with more regard to "legal advice" than to the Act itself, to exalt the Board to a regulatory authority, as if it had been furnished with an amplitude of power in the field of architectural practice comparable with, for instance, the Bank of England in its field under section 1 of the Banking Act 1987 ("The Bank ... shall have the duty generally to supervise the institutions authorised by it in the exercise of" the powers conferred on it by the Act: mentioned in a case reported in 1991, which was one of three cases cited by the ARB in February 2002 in answer to a registered person's query about Standard 8 compliance certificates; anyone properly advised can see that all three cases tend to support the opposite of the ARB's claim).

– Do responsible policy-makers now consider that the Act and its operation has effects on Schools of Architecture, on entry into the profession and on practising architects which are increasingly anomalous?

official document will suffice to bring the disciplinary procedures into operation.

It should not take an impartial and properly informed person long to see, first, the spurious character of such an attempt, and secondly, that it would be contrary to natural justice to have a committee consisting of a majority of Board members themselves (at least two out of three) deciding upon such an issue, in a contest between the Board as the party making such a claim on its own behalf, and an architect who has had the temerity to refuse to be browbeaten by the Board's effrontery.

Native common sense is enough to see that any "legal advice" which led the Board into claiming that the words as enacted authorised such conduct by the Board is bound to be suspect; and, in the circumstances, the objection is too fundamental to be avoided by later on appointing for a PCC hearing persons who are not and never have been Board members.

> *– Can responsible policy-makers consider that such overbearing or devious conduct on the part of a statutory body is acceptable by the standards of the rule of law?*

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