

*“Rules and Responsibility” ([Sir Christopher Ball](#)): Architects and the public*

(8 July 2010)

(Postscript added 2 August 2010)

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**This Note proposes that the way forward will be eased if the government moves quickly to repeal [Part IV of the 1997 Act](#), on the ground that more recent legislation suffices for securing the public against dishonest claims about being qualified to practise as an architect.**

Forward-looking policy-makers are seeking ways for the profession and general public to have a better deal than now prevails under the Architects Act. This means reconsidering the Act and current arrangements within the context of present-day practice and education, and of other legislation including changes connected with EU Directives. But it also means that careful consideration must be given to the interim period of the next year or so, while viable arrangements for the future are being worked out in detail and then brought into effect.

The current arrangements are in operation under the set of four Statutory Instruments which came into force consecutively in the period October 2007 to June 2008, namely: 2007 No. 2781 *Professional Qualifications*, 2008 No.1276 *Trade Descriptions*, 2008 No.1277 *Consumer Protection* and 2008 No.1331 *Architects* (mentioned [elsewhere](#) in AARUK pages).

On **architectural education**, there seems to be good reason for giving effect to the recommendation in the [Highton Report](#) to “*allow the ARB to rely upon the reports of the RIBA Visiting Boards (and those of the other charter bodies) as evidence of the educational sufficiency of each school of architecture*” (recognising that the public interest is served by this proposal in that education is a part of the charter responsibilities of the RIBA and other charter bodies, which are monitored by the Privy Council); and **against title abuse**, it is not too difficult to devise a programme for prosecuting and deterring commercially and personally dishonest claims about being a registered architect or chartered architect, nor should it be too difficult for the professional bodies and official authorities to cooperate in achieving this in future, in ways proportionate to public interest in the problem.

A major question is: Would a Byelaw amendment be needed in connection with the RIBA undertaking all or part of the status of EU competent authority, in place of the ARB or in some other way?

The answer seems to be that it would be open to the RIBA to accept some such arrangement if the government were willing to offer it. Looking at the current [RIBA Charter and Byelaws](#) it can be seen first of all that article 2 of the Charter declares: “*The objects of the Royal Institute are the advancement of Architecture and the promotion of the acquirement of the knowledge of the Arts and Sciences connected therewith*”, and specifically states that “*The Royal Institute may grant diplomas, certificates or other forms of recognition*”.

Secondly, it can be seen that Charter article 4.6 states: “*Subject to the provisions of the Architects Act 1997 as from time to time amended: (a) a chartered member of the Royal Institute may use the style ‘Chartered Architect’ (but shall not use any abbreviation of that style); (b) a member of the Royal Institute may use after his name any statement of or initials indicative of his class, or (where he is a member of a class which is divided into sub-classes) of his sub-class, of membership of the Royal Institute which the Byelaws may prescribe or allow in regard to that class or sub-class (but shall not use any variant of a statement or initials so prescribed or allowed)*”.

Thirdly, the Byelaws relevant to membership (see end-note on pages 3 and 4) would *prima facie* suffice, (subject to Byelaw 5.19, which prohibits the Council delegating “the approval of the long-term strategy for the Royal Institute and its subsidiaries”, “the setting and approval of any governing policy”, or “the creation or revision of any membership categories”).

Another major question for responsible policy-makers is about timing, and the sequence of any transitional arrangements.

It is likely that:

(1) Those already in favour of change would acknowledge that it could not be accomplished before the end of 2010 (less than 6 months from now, including summer away time and competing with other pressing matters).

(2) In the meantime, ARB renewal notices for 2011 retention will have gone out, and there is also the academic cycle to be considered.

(3) Responsible authorities would wish to be in a position to give firm undertakings that the Register will continue for at least that period, namely, 2011, while setting up new arrangements to come into operation as from 1 January 2012.

It would therefore be appropriate in the interim for the ARB-Government nexus to adopt a “Framework” which would curtail the ARB to operating on a “caretaker” basis.

In this connection, policy-makers may well see that **the way forward would be considerably eased if the government moved quickly to repeal (when Parliament re-assembles after the summer break) sections 20 and 21 of the 1997 Act (Part IV) as from the end of the current retention year, on the ground that a more effective means of securing the public against dishonest claims about being qualified to practise as an architect is now available in the context of the Fraud Act 2006 and other legislation, including the set of four Statutory Instruments which came into force consecutively in the period October 2007 to June 2008 mentioned at the top of this article.**

This would leave qualified persons free to renew retention (or to apply or reapply for registration) in accordance with all the other provisions of the Act, and they could practise as “registered” if they so wished; while chartered architects could decide whether to register or not.

And it would allow policy-makers opportunity to consider in detail what if any further legislative (or other) steps to take concerning future arrangements. The debate would then be relieved of the vexation and distraction persisting around the issue of “Protection of title”. That would no longer be the issue (as it used to be); only, whether the Register should continue, and if so how, as a convenient way for the UK to comply with EU directives without adversely affecting the RIBA as the leading professional body.

**Such a repeal would leave intact the right of any person qualified as an architect to choose to be registered in accordance with the Act, and registered persons would be exclusively entitled to take and use a description asserting inclusion in the Register of Architects kept and published under the Act; and it would leave intact the statutory requirements and liabilities imposed on registered persons under Part II (payment of fees and satisfying requirements about qualifications and competence) and Part III –Discipline.**

**At the same time, any person or business entity (including an architect entitled to use the descriptive style “Chartered Architect” or firm entitled to use “Chartered Practice”) would be free to supply services of the same kind as a registered person, but could claim to be so**

**registered only subject to and in compliance with the Act.**

*Postscript*

2 August 2010

Following some further discussion it appears that a way in which the operation of the Act could conveniently be adapted to current requirements would be the retaining of a modified version of Part IV of the Act to the effect that

- (a) the restriction in sub-section 20(1) (which now applies to “a person” other than one registered in Part 1 of the Register) would be disapplied;
- (b) the restriction in sub-sections 20(3) and (4) would remain in respect of bodies corporate, but would be disapplied in respect of any business carried on by a firm or partnership otherwise than as a body corporate; and
- (c) in respect of the restriction on bodies corporate the designation of the ARB as “competent authority” would be continued (for compliance with EU requirements concerning freedom of competition and establishment across borders), and with it the remainder of the Act which requires the ARB to maintain and publish the Register of Architects (subject to any other modifications which may be deemed convenient in this connection).

Until the detail of the Public Bodies (Reform) Bill is known it remains uncertain what means of repealing or modifying the Architects Act 1997 (as amended 2008) will then be available to the government. In the meantime, it has been noted that

- (1) the Bill is to apply only to England and Wales, ([The official site of the Prime Minister](#)) and
- (2) it “Will give ministers the powers to abolish, merge or transfer quangos back into departments” and “Will provide for a review of the functions of all public bodies every three years, as opposed to the current practice of every 5 years. (The review will comprise a test: ‘Is the function technical; does it need to be politically impartial; and do facts need to be determined transparently?’)” ([Policitics.co.uk](#))

## *End-note*

### **Relevant RIBA Byelaws (extracted):**

1.1 In these Byelaws...

(b) the following expressions shall be read as if the words ‘of the Royal Institute’ were inserted thereafter: ‘Affiliate’ ‘Member’ ‘Associate Member’ ‘membership’ ‘Chartered Member’... ‘Student Member’;

(c) the expression: ‘Affiliate’ means an affiliate of any sub-class; ‘Associate Member’ means an Associate Member of any sub-class;... ‘Chartered Member’ means a Member elected under Byelaw 2.4; ‘Chartered Practice’ means a formally-established business providing architectural services and comprising one or more Chartered Members which meets the criteria for, and operates in accordance with, a scheme prescribed by the Council, or a board to which the Council has devolved responsibility. ‘continuing professional development’ means the systematic maintenance, improvement and broadening of knowledge and skill and the development of personal qualities necessary for the execution of professional and technical duties in the course of a Chartered Member’s working life;....

2.1 (a) The Council shall make regulations prescribing classes and sub-classes of Chartered and non-Chartered Membership.....

2.2 Every candidate for election to membership of any membership class shall follow the application procedure prescribed by the Council in Regulations for the relevant membership class.

2.3 Only candidates who meet the criteria prescribed by the Council in Regulations and elected into membership shall be entitled to the rights and privileges relevant to their membership class.

2.4 A candidate may be elected as a Chartered Member if (a) he or she has undertaken courses of study and passed examinations which have been prescribed or recognised by the Council, or (b) can demonstrate to the satisfaction of the Council a proper training in Architecture and is otherwise appropriately qualified. ....

2.6 Each class and sub-class of membership shall have, in addition to any rights and privileges conferred by the Royal Charters and these Byelaws, such rights and privileges as may be granted to it by resolution of the Council.....

2.7 (a) A Chartered Member may use the statement ‘Member of the Royal Institute of British Architects’ and the initials RIBA.... (c) A member shall not use any statement or initials implying membership of the Royal Institute other than those which are prescribed and allowed by these Byelaws....

2.8 (a) Chartered Members, except those who are fully retired from practice, shall undertake continuing professional development in accordance with any scheme approved by the Council. The Council may by Regulation amend the scheme from time to time. (b) The use of any affix (as allowed by Article 4.6 of the Supplemental Charter and Byelaw 2.7 above) by a Chartered Member, other than the fully retired, shall be deemed to be a declaration of compliance with this requirement.

2.9 The Royal Institute shall publish a Code of Professional Conduct which indicates the

standards of professional behaviour expected of members. The code may be revised from time to time by the Council. All applicants for Chartered Membership (and applicants in such other membership classes as determined by the Council) shall sign a declaration confirming their willingness to abide by its terms, and those of the Charter and these Byelaws....

2.11 Criminal Convictions A member may be suspended or expelled from membership without recourse to the procedures arising under Byelaw 4, if he or she is convicted of a criminal offence. The provisions for suspension and expulsion shall be agreed by the Council in Regulations.

2.12 The Council, or a board or committee to which the Council has devolved responsibility, shall prescribe the criteria for registration, compliance and monitoring of Chartered Practices...

4.1 Any Chartered, Associate or Student Member who contravenes their election declaration; or in a professional capacity, behaves in a manner considered to be unacceptable in a professional person; or contravenes the Royal Institute's Code of Professional Conduct, shall be liable to reprimand, suspension or expulsion. ....

4.7 The Council shall make provision in Regulations for a procedure for appeals against disciplinary decisions.

4.8 As a result of an appeal the Council may: rescind an expulsion, rescind or vary a suspension. A notice of the outcome of an appeal shall be published in every publication which published the original notice of sanction.