

## *Note on Part III of the Architects Act 1997*

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*Origin* : The provisions which are now set out in Part III of the [1997 Act](#) were among the amendments introduced (in 1996) to the Architects Acts 1931-1969, under which the Register of Architects was first instituted and has been continuously maintained. The 1996 legislation had been preceded by a Departmental consultation on the paper "[Reform of Architects Registration](#)".

*Professional practice* : It would be reasonable to claim that an underlying purpose of the legislation has been to uphold the practice of architecture as a profession serving the public, within the territory of the United Kingdom. That is to say a profession whose practitioners are willing to act in accordance with certain principles of ethical conduct, as understood in this country. (In some grave situations, deeper feelings of betrayal, disgrace, infamy or disgust may arise.)

*Restrictive practices* : From the latter part of the last century there has been an emphasis on the use of legislative restraints enforced by statutory agencies in place of voluntary restraints condemned as "restrictive trade practices". This has affected in turn larger economic activities which had emerged from the previous century, including trade unions and retailing, businesses engaging in commerce, finance, industry, transport and communications, and lesser economic activities (measured by turnover) including the practice of traditional and newer professions. (Architects and commercial lawyers will have no difficulty in recognising this as happening within the development of trading activity and economic arrangements on the global scale.)

*Conflict of interest* : As a result, residual questions of ethical conduct (for professional practitioners) will usually be connected in some way with preventing, or at least declaring, a conflict of interest adverse to the ideal of the community of interest of the practitioner with those affected by the product of their work: architecture as a social art. This is clearly to be distinguished from a practitioner being bound by particular rules or regulations which exist to prescribe the manner in which any of the authorised functions of a registration body or other executive agency are to be performed; and also to be distinguished from an arrangement for controlling the use of a trade name or mark in connection with commercial franchising.

*The Board's duties* : In this context it is important to understand that the immediate purpose of Part III as enacted has never been to enable the Board (or any committee or officer of the Board) to enforce demands of any kind upon registered persons concerning professional conduct. On the contrary, it imposes a series of statutory duties upon the Board itself and its Professional Conduct Committee, the overriding purpose of which is undeniably to protect accused persons from misguided, spiteful or extravagant allegations which would result in undeserved disciplinary orders or other injustice.

*Accused's defence* : At the same time, accused persons are free to use the rights which become available to them at successive stages in connection with disciplinary proceedings, but they are not *obliged* to. For whatever reasons (and it ought not to be assumed that they are other than honourable), an accused person may prefer to waive any of those rights even to the point of foregoing the right to registration. An accused may, perhaps, have come to see that the proceedings would be likely to result in a denial of justice due to a certain manifest and inveterate bias.

*Comparisons* : There is really no other way of properly understanding the provisions as enacted. If there were any doubt about that, the Architects Act could be contrasted, generally and in detail, with others, such as those affecting insurance brokers or the supply of financial services, or the several branches of the legal profession, or anyone engaged in building operations.

*Further confirmation* : To complete the picture, and confirm the above by careful attention to the

Act itself, the effects of Parts II and IV should be taken into account with section 15 of Part III.

The arrangement of the Act as a whole helps to show the interaction of section 15(1) of Part III – “Discipline” with section 7 in Part II – “Registration etc.”, and with section 21 in Part IV “Use of title ‘Architect’”. Thus a registered person could have been convicted in connection with an offence under section 7 (obtaining registration by false representation: *level 3 offence*) or, under section 21, of a quite different offence connected with section 20(4) (*level 4 offence*). Section 15(1)(b) would then become operative, if those offences were within the meaning of “criminal offence” and provided that the offence had “material relevance to the offender’s fitness to practise as an architect” (which could be indisputable) (up to *level 4 offence*, s.16(2)).<sup>1</sup>

It is important at this point to remark that if the facts and circumstances of such an offence had been such that the convicted person became liable to a disciplinary order under section 15, it would be by reason of what the Act itself had expressly prescribed in the event of a registered person’s conviction of a criminal offence material to the fitness to practise as an architect. It would *not* be by reason of any duty or obligation which the Board had claimed to be able to originate and enforce (such as the tick-box PII certificate or for “monitoring” compliance: see [Acting Registrar’s letter to I S et seq.](#)). This is irrespective of the validity of Standard 8 in other respects. On jactitation of power see [Status of the ARB](#) p.4 and Case Study 1 [Application to Quash](#) paragraph 34 (e) - (i).

In particular, in the case of Part IV, the statutory purpose of any rules under section 20(4) can only be to enable certain business entities to claim, assert and have the benefit of the *exemption* from prosecution which the Act permits them to have at large under section 20(3). (It would strain meaning to the point of dissolution to treat that as an “obligation” owed to the Board by any such business entity.) When all is said and done, the Board’s function, as enacted, is essentially to provide a registration service for qualified practitioners. The transcript of the proceedings in Case Study 1 seems to show that this was not understood by the Board’s solicitor responsible for presenting the case.

*Conclusion* : It is submitted that these instances show conclusively that there is no room for putting on the Act a construction which would either enable the Board to claim to originate a duty to inform the Board, such as it has been asserting in Code Standard 8, or would enable the Board’s Professional Conduct Committee, directly or indirectly, to enforce such a claim (as made in Acting Registrar’s letter to I S *et seq.*).

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**Source** : AARUK

**Title** : *Practitioners’ Registration Service: Further amendment?* ... For an outline of the steps by which the Board has progressively strayed from the Act, in principle and in fact, see the Notice of Application to Quash in Case Study 1. Should the legislation be further amended to save the Board from the charge of jactitation of power?

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1 Architects might consider a likelier case for the application of [s.15\(1\)\(b\)](#) would be a more than minor offence under Building Regulations or Health and Safety requirements, which would also be an offence irrespective of the status of the offender as an architect or registered person.

Whether or not it is thought that s.15(1)(b) would operate as an additional deterrent, it seems unlikely that registration of an offender would have secured for the public more effective protection than would otherwise have been obtainable. Any connection with compensation for loss, damage or injury is too hazy or non-existent.