

In the course of communications about the validity of the amendment inserted in the Architects Act 1997 as s.4(2A), the attention of the EU Internal Market directorate has been drawn to statements inconsistent with the Act which have been repeated so often on official websites and in official documents that persons appointed to the department (Ministers as well as officials – there have been many changes) or who have been appointed by the government as Board members, or by the Board as officials, may have lost sight of the statutory provisions as enacted, as explained in the following:

- The restrictions had been enacted in primary legislation by the Westminster Parliament in 1938 (“[*An Act to restrict the use of the name Architect to Registered Architects and to extend the time within which practising architects may apply for registration*](#)”), amending an originating enactment of 1931 (“[*An Act to provide for the Registration of architects and for purposes connected therewith*](#)”).
- The current provisions are contained in the [Architects Act 1997](#), which was passed through Parliament as a “consolidating” Act. The amendments which had been made in previous legislation were listed in the [Table of Derivations](#) printed with official copies of the Act.
- This legislation is the sole source for the existence and legitimacy of the Board, and for the restriction on the use of the word “architect” for the benefit of persons who, being qualified, have chosen, from year to year, to be entered in the statutory Register of Architects which the Board has the duty to maintain and publish. Registration is voluntary.
- These enactments have not ascribed to the registration body any of the functions for protecting the public from, or in respect of, mishaps connected with building control, planning, design, construction, site safety and so on which are the responsibility of local authorities, or other prescribing or enforcing or advisory bodies such as the Health and Safety Executive, whose ambits apply to all persons, including any who are qualified for registration, whether in fact they choose to be registered or not. Private law remedies, including those specifically for “consumers”, in respect of breach of contract or otherwise are equally available against architects whether registered or not...

New subsection 2A¹ which has been added to section 4 of the Act states:

(2A) For the purposes of subsection (1), a Directive-rights national shall be treated as having achieved a standard of competence equivalent to that demonstrated by satisfying subsection (1)(a) if—

(a) he produces evidence of a description specified in section 4A(1) and he is either—

(i) lawfully established as an architect in the relevant European State in which that evidence was issued, or

(ii) eligible to practise as an architect in that State, as confirmed by a competent authority in that State; ...

1 See [RIBApedia](#)

In August 2008, an architect in the United Kingdom wrote to the Director-General of the Internal Market at the European Commission, making an inquiry in the following terms:

It appears that the new provisions s.4(2A)(a)(i) and s.4(2A)(a)(ii) are unlawfully restrictive. It seems that the right to registration as an architect in the United Kingdom should depend only upon certain specified qualifications being obtained and not upon "lawful establishment as an architect" or to an "eligibility to practise" in another State.

An initial response was sent on 21 October 2008. It said:

In order to define exactly the scope of the new dispositions and to check in which extent they are in conformity with Directive 2005/36/EC and especially with its Annex VII² concerning the documents and certificates which may be required in

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ANNEX VII

Documents and certificates which may be required in accordance with Article 50(1)

1. Documents

- (a) Proof of the nationality of the person concerned.
- (b) Copies of the attestations of professional competence or of the evidence of formal qualifications giving access to the profession in question, and an attestation of the professional experience of the person concerned where applicable.

The competent authorities of the host Member State may invite the applicant to provide information concerning his training to the extent necessary in order to determine the existence of potential substantial differences with the required national training, as laid down in Article 14. Where it is impossible for the applicant to provide this information, the competent authorities of the host Member State shall address the contact point, the competent authority or any other relevant body in the home Member State.

- (c) For the cases referred to in Article 16, a certificate concerning the nature and duration of the activity issued by the competent authority or body in the home Member State or the Member State from which the foreign national comes.

- (d) Where the competent authority of a host Member State requires of persons wishing to take up a regulated profession proof that they are of good character or repute or that they have not been declared bankrupt, or suspends or prohibits the pursuit of that profession in the event of serious professional misconduct or a criminal offence, that Member State shall accept as sufficient evidence, in respect of nationals of Member States wishing to pursue that profession in its territory, the production of documents issued by competent authorities in the home Member State or the Member State from which the foreign national comes, showing that those requirements are met. Those authorities must provide the documents required within a period of two months.

Where the competent authorities of the home Member State or of the Member State from which the foreign national comes do not issue the documents referred to in the first subparagraph, such documents shall be replaced by a declaration on oath - or, in States where there is no provision for declaration on oath, by a solemn declaration - made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or qualified professional body of the home Member State or the Member State from which the person comes; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

- (e) Where a host Member State requires of its own nationals wishing to take up a regulated profession, a document relating to the physical or mental health of the applicant, that Member State shall accept as sufficient evidence thereof the presentation of the document required in the home Member State. Where the home Member State does not issue such a document, the host Member State shall accept a certificate issued by a competent authority in that State. In that case, the competent authorities of the home Member State must provide the document required within a period of two months.

- (f) Where a host Member State requires its own nationals wishing to take up a regulated profession to furnish:

- proof of the applicant's financial standing,

(continued...)

accordance with Article 50(1)³, our services took contact with the UK authorities and met them on 22 September 2008. There are still a number of issues to be clarified and we continue to discuss these questions with the UK authorities. We will keep you informed about the results of these discussions.

Inquirers and policy-makers may be surprised by these apparent restrictions when it has for so long been acknowledged that architecture is best served without unnecessary barriers to the movement of its practitioners.

21 April 2009

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- 2 (...continued)
- proof that the applicant is insured against the financial risks arising from their professional liability in accordance with the laws and regulations in force in the host Member State regarding the terms and extent of cover,
- that Member State shall accept as sufficient evidence an attestation to that effect issued by the banks and insurance undertakings of another Member State.
2. Certificates
- To facilitate the application of Title III, Chapter III, of this Directive, Member States may prescribe that, in addition to evidence of formal qualifications, the person who satisfies the conditions of training required must provide a certificate from the competent authorities of his home Member State stating that this evidence of formal qualifications is that covered by this Directive.
- 3 Article 50
- Documentation and formalities
1. Where the competent authorities of the host Member State decide on an application for authorisation to pursue the regulated profession in question by virtue of this Title, those authorities may demand the documents and certificates listed in Annex VII.