

*Architects Act 1997 : enforceability of the Act in doubt (AARUK Case Study 3, Part 3)*

22 April 2009

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Following the architect's inquiry (Case Study 3 [Parts 1](#) and [2](#)), a reply from the EU Commission (*see below*) indicates a flaw in the [Architects Act 1997](#) as altered by the statutory regulation made in June 2008 by the UK Secretary of State (DCLG) under the European Communities Act 1972. In this respect other provisions of the Act must be vitiated, affecting registration ([Part II](#)) and use of title "architect" ([Part IV](#)), thus putting at risk any attendant staff or legal costs, levying of fees, and enforcement action by prosecution or threat. The effect upon the indemnity insurance position of the Architects Registration Board may need to be considered, and there may be questions about the responsibility of the Secretary of State and the department.

Looking at the evidence which has been made available, an independent commentator is likely to conclude that before the Regulation was submitted to Parliament for approval the department's consultation draft of August 2007 was altered with a view to frustrating the intent of the EC Directive. AARUK leaves others to judge if that was so, by what criteria it could have been rightfully done, and whether it could have been well advised.

Correspondence between the department (DCLG) and the EU Commissioners and others (copies of which have been disclosed to the inquiring architect) reveals that the alteration in question resulted from representations received from the Architects Registration Board and its former chairman, Mr Humphrey Lloyd QC, (among others) after the earlier consultation draft had been made available by the department in August 2007. (For AARUK's comment at the consultation stage see [here](#).)

The correspondence from the European Commission to the DCLG shows that the Commission "takes the view that by introducing the section 4(2A)(a) of the Architects Act 1997 requesting a certificate of eligibility or a proof of legal establishment in the home Member State, requirements not foreseen by Directive 2005/36/EC for the establishment of a migrant professional, the UK authorities have transposed Directive 2005/36/EC in an incorrect manner".

AARUK notes with interest that this was stated in reply to a letter from the UK government department (DCLG) dated 8 January 2009 which was headed:

"New Pilot Project Case: 197/08/MARK – DCLG regulations concerning the Internal Market Services – Conformity to the Architects Regulations 2008".

For doubts previously expressed about the ARB Code of Conduct under Part III of the Act see:

[RIBA paper on the Status of the Architects Registration Board.](#)

[Case Study 1](#)

[Case Study 2](#)

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