



Proposed amendments to the Architects Act 1997 Consultation



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Consultation

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Summary

Scope of the consultation

Topic of this consultation:	Amendment of the Architects Act 1997 in order to comply with European Directive EU 2005/36 on the recognition of professional qualifications
Scope of this consultation:	This consultation is to ask for comments on proposed amendment of section 4 (2) a of the Architects Act 1997
Geographical Scope:	The United Kingdom and Northern Ireland
Impact Assessment:	This is a minor amendment which will not place any new burden on business and as such an Impact Assessment is not required.

Basic Information

To:	This is a public consultation and it is open to anyone to respond. We would particularly welcome views from: <ul style="list-style-type: none">• Architects• Consumers of Architect' services.
Body / bodies responsible for the consultation:	Communities and Local Government (Sustainable Buildings Division)
Duration:	The consultation is published on 1 March 2011 and will end on 25 April 2011. This is an eight-week period.
Enquiries:	Richard Harral 0303 44 41778 architectact2011@communities.gsi.gov.uk
How to respond:	By e-mail to: architectact2011@communities.gsi.gov.uk A downloadable questionnaire form which can be e-mailed to us will be available on our website at: www.communities.gsi.gov.uk/publications/planningandbuilding/architectsactconsultation Alternatively, paper communications should be sent to: Richard Harral Sustainable Buildings Division Zone 5/G9 Communities and Local Government Eland House Bressenden Place London SW1E 5DU

Additional ways to become involved:	This is a written exercise.
After this consultation:	A summary of consultation response will be published on the Department website.
Compliance with the Code of Practice on Consultation	The consultation complies with the code.

Background

Getting to this stage:	The Architects Act 1997 was amended on 28 May 2008 in order to transpose European Union Directive 2005/36 on the recognition of professional qualifications.
Previous engagement:	A Consultation exercise on the proposed amendments to the Act in order to transpose the directive took place between 5 July and 05 October 2007.

Introduction

1. This consultation looks at an amendment to the Architects Act 1997 (as amended) (“Architects Act”) in order to ensure continuing compliance of UK legislation with Directive EU 2005/36 on the Mutual Recognition of Professional Qualifications. The Directive sets out how professionals can obtain recognition of their qualifications when moving between Nation States within the EU in order to support greater freedom of movement within the Single Market.
2. Section 4 (2) A of the Architects Act sets out the basic criteria for automatic recognition of qualifications for architects. The UK recognises that the way in which this part of the Architects Act is currently drafted could have the potential to give rise to conditions prejudicial to the automatic recognition of qualifications held by other Member State nationals who are seeking to practice as architects in the UK and who would be entitled to practise as architects in their home member State.
3. In particular, reference to eligibility and to lawful establishment in section 4 (2A) may not be acceptable as these terms may impose requirements on people applying to practise as architects in the UK that are not set out within the Directive.
4. This consultation proposes an amendment to Section 4 (2A) removing reference to lawful establishment and eligibility in order to ensure that potential to require any future additional requirements other than those set out within the directive are removed.
5. In proposing this amendment we are seeking minimal compliance with European law and will not create any additional burdens or requirements beyond those required by the directive.

Policy background

6. European Union Directive 2005/36/EC (“the Directive”) was adopted on 7 September 2005, and it came into force on 20 October 2007. It was transposed in to UK law on 28 May 2008. The intention behind the Directive is to make it easier for qualified professionals (architects, accountants, teachers, health professionals, etc) to practise their professions in European countries other than their own, with a minimum of red tape but with due safeguards for public health and safety and consumer protection. It provides for the mutual recognition of diplomas, certificates and other evidence of formal qualifications in order to assist the free movement of professionals throughout the European Union.

7. Articles 49 and 56 of the Treaty on the Functioning of the European Union deal with free movement between Member States of the European Union. Those articles provide that restrictions on the freedom of establishment of EU nationals in another Member State, or restrictions on the freedom to provide services in another Member State, are prohibited. For nationals of the Member States this includes, in particular, the right to pursue a profession in an employed or self-employed capacity in a Member State other than the one in which they have obtained their professional qualification.

8. In relation to architects, the Directive requires that where a directive rights national is entitled to practice as an architect in their home Member State (defined as the Member State in which they received their qualifications) they should also be entitled to register or practise as an architect in other European Union Member States. The Directive sets out in annex V point 5.7.1 the information that a Member State may request in order to give access to the market in that member state. Recognition of these qualifications should be automatic unless reasonable doubts exist as to the validity of those qualifications, in which case the directive allows for further information to be requested.

9. Section 4 (2A) of the Architects Act sets out how this is given effect in UK law and 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;

10. Section 4 (2)A may not comply with the Directive in that the Directive does not provide for Member States to demand proof of either eligibility or lawful establishment beyond the documentation as referred to in Annex V points 5.7.2. As a result, it is possible that the wording of the Architects Act creates the potential for the UK to place requirements on migrants not permitted by the Directive and which could restrict automatic recognition and freedom of movement.

11. The UK government and the Commission are in complete agreement as to the desired effect of the Directive, specifically that where a Member State National is entitled to practise as an architect in their own Member State, other Member States should automatically recognise the qualifications that entitle them to do so and grant equal access in that other Member State.

12. Key to ensuring proper functioning of the Directive in practice is the accuracy of Member State qualifications listed within Annex V. The UK government notes that if these annexes were to be out of date or incorrect, it could give rise to the unintended situation whereby migrants from other Member States would be entitled to register in the UK where they would not be entitled to do so in their home Member State i.e. that they might receive more favourable treatment in the UK than in their own Member State.

13. However, the UK notes that the Commission is taking steps to ensure that all Member State listings within Annex V are updated to fully reflect current requirements i.e. that only those entitled to practise in their Home Member State will be entitled to automatic recognition.

14. The UK government therefore proposes to take forward consultation and subsequent amendment of the Architects Act as set out in the enclosed draft Statutory Instrument by deleting reference to eligibility and lawful establishment in paragraph (a) of section 4(2A).

Implementing the Directive in the UK

15. The Department for Innovation, Universities and Skills (DIUS) leads on implementation of the Directive and their European Communities (Recognition of Professional Qualifications) Regulations 2007 (“the DIUS Regulations”) apply to all ‘general systems’ professions; i.e. those whose training conditions are not harmonised across the EU. Some of these provisions apply also to the ‘sectoral’ professions such as architects and doctors whose training conditions are harmonised and have until now been set out in separate ‘sectoral’ Directives.

16. Department for Communities and Local Government leads on transposing measures relating to the architects’ profession. This involves laying regulations which amend the Architects Act, which is the legislation governing

the regulation of architects as a profession. The draft of amendments to these regulations is the subject of this consultation.

The Devolved Administrations

17. While under the devolution settlement with Northern Ireland, the Northern Ireland administration has policy responsibility for regulation of the architectural profession, the Architects Act currently extends to the whole of the United Kingdom. The devolved administration however still remains responsible for transposing the Directive into its own domestic legislation in relation to architects. However, as the Northern Ireland administration has consented to the UK Government acting on its behalf in making this regulation, this consultation now extends to interested persons in Northern Ireland from whom responses would be welcome.

18. Under the devolution settlements with Scotland and Wales, the regulation of the architectural profession is not a devolved matter; therefore the regulation that the Department for Communities and Local Government is responsible for making will extend to these parts of the United Kingdom.

19. The Architects Act does not apply to Gibraltar, as it has its own legislation – Gibraltar is therefore responsible for its own transposition of the directive in to law.

Scope of this consultation

20. The Directive is European Union law that the UK is obliged to implement; we cannot revisit the underlying principles or those provisions whose transposition into domestic law leaves no room for discretion at national level; But where we, as a Member State, have discretionary powers then we can decide on the action to be taken; it is in this area, but only in relation to section 4 (2A) that we are seeking your comments.

21. We have already liaised with the UK architects' regulatory and professional bodies. This written consultation is a continuation of this process.

22. This consultation will close at midnight on 25 April 2011. We will consider feedback from the consultation and recommend any resulting amendments to the draft legislation to Ministers, before laying the regulations before Parliament.

The consultation

23. In responding to this consultation we would ask that you reply to the following three questions where appropriate:

Q1 Do you have any views as to whether the proposed amendment suitably transposes directive 2005/36 on the Mutual Recognition of Professional Qualifications in to UK Law?

If you do, please set out your views and submit this in writing as part of your consultation response to the address detailed in the summary at the start of this consultation document.

Factual accuracy

24. We would be grateful if consultees would bring to our attention any factual errors or omissions in the draft regulations which require correction (for example, incorrect titles, qualifications, names of organisations etc).

Q2 Are there any factual errors or omissions that you wish to draw to our attention?

Impact of the proposed amendment

25. In making this amendment to the Architects Act we have taken into consideration whether there will be any impact on business or individuals. The amendment will not change current practice for architects in accessing the UK market, but will ensure conformity with European Union Law. As a result we believe that it will create no new burdens for architects as individuals or for business.

Q3 Do you agree that the proposed amendment will not create new burdens for business?

If you do think the amendment will create new burdens for business what do you think they will be?

This consultation and next steps

The process for consultation and making of the regulations

26. These draft regulations are being made under section 2(2) of the European Communities Act 1972. Following consultation Ministers in the Department for Communities and Local Government may wish to make amendments to the draft regulations before they are laid before the UK Parliament with a report on the consultation. The report about the consultation will be posted on the Department's website.

27. The regulations are subject to the negative procedure whereby they must be laid in Parliament for at least 21 days before coming into force.

What will happen to the responses?

28. The Department will take account of the responses received to this consultation before making decisions on possible changes to the Architects Act.

29. Following the close of the consultation we will analyse the responses to the consultation and produce a summary of them which will be published on the Department's website.

Publication of responses - confidentiality and data protection

- Information provided in responses to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. (These are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
- If you want any of the information that you provide to be treated as confidential you should be aware that under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply, and which deals amongst other things with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
- If we receive a request for disclosure of information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- The Department will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The seven consultation criteria and this consultation

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Better Regulation Executive (BRE) in the Department for Business, Innovation and Skills (BIS) and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome;
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation;
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all

circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department of Communities and Local Government will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please inform DCLG Consultation Co-ordinator.

The postal address is:

Zone 4/J2

Eland House

London SW1E 5 DU

The e-mail address is: consultationcoordinator@communities.gsi.gov.uk

Annex A: Draft Statutory Instrument

STATUTORY INSTRUMENTS

2011 No. XXXX

ARCHITECTS

The Architects (Recognition of European Qualifications) Regulations 2011

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State, is designated⁽¹⁾ for the purposes of sections 2(2) of the European Communities Act 1972⁽²⁾, in relation to the recognition of higher-education diplomas, formal qualifications, or experience in the occupation, required for the pursuit of professions or occupations.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act:

Citation and commencement

1. These Regulations may be cited as the Architects (Recognition of European Qualifications) Regulations 2011 and shall come into force on XX XXXXXXXX 2011.

Amendment of the Architects Act 1997

2. In paragraph (a) of section 4(2A) (registration in Part 1 of the register; general) of the Architects Act 1997⁽³⁾ omit the words from “and he is either” to the end of the paragraph and insert the words “which provides access to the profession of architect in the relevant European State in which that evidence was issued”.

Signed by authority of the Secretary of State

Parliamentary Under Secretary of State

⁽¹⁾ S.I. 2002/248

⁽²⁾ 1972 c.68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).

⁽³⁾ 1997 c.22

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend section 4(2A) of the Architects Act 1997 (c.22). They remove the statement that in order to benefit from recognition of the professional qualifications gained in his or her home Member state a Directive-rights national needs to be lawfully established or eligible to practise. Instead individuals shall be treated as having achieved an equivalent standard of competence by the producing evidence described in section 4A(1) where this provides access to the profession in that home member state. The evidence described in section 4A(1) includes evidence of formal qualifications listed in point 5.7.1 of Annex V to the Directive. This Annex was last updated by the European Commission on 14 December 2010..

The requirements to produce evidence of lawful establishment or eligibility to practise were inserted into the Act in order to clarify that the UK would accept registration (or lawful establishment) in the home Member State where qualifications had been issued but would also accept evidence demonstrating that were the applicant to apply for registration in their Home Member State they would be eligible to do so. The UK considered that such clarification would help in avoiding Member State nationals who intended to practice only in the UK being required to pay registration fees in both their Home Member State and the in the UK. At the same time, these requirements ensured that where entries in Annex V were not current in describing what was required to access a given Home Member State market individuals would not gain access to the profession in the UK unless they were eligible to do so in their home Member State . Since Annex V now lists for each Member state all the qualifications (including practical experience) required to gain access to the profession, these additional requirements of lawful establishment and eligibility to practise are not necessary in order to ensure automatic recognition.

These Regulations make an amendment to the provisions inserted in the Architects Act 1997 by the Architect (Recognition of European Qualifications etc and Saving and Transitional Provision) Regulations 2008 (S.I. 2008/1331) (“the 2008 Regulations”) which implement, in part, Directive 2005/36/EC(OJ No L 255, 30.0.05, p.22) amended by Council Directive 2006/100/EC (OJ No L 363, 20.12.06, p.141) (“the Directive”) on the recognition of professional qualifications. The Directive is designed to remove obstacles to free movement of persons and services within the European Union, so that nationals of the Member states have the right to pursue a profession in a Member state other than the one in which they have obtained their qualifications. This is achieved by the Directive providing for a procedure of the automatic recognition of certain specified qualifications, and for a procedure for assessing other qualifications for the purpose of giving access to a profession. These Regulations amend the Architects Act 1997 to ensure the automatic recognition of the updated qualifications listed in point 5.7.1 of Annex V to the Directive.

Annex B: Directive EU 2005/36 on the recognition of professional qualifications

Directive EU 2005/36 can be downloaded from the following link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:255:0022:0142:en:PDF>

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