

**EXPLANATORY MEMORANDUM TO
THE ARCHITECTS (RECOGNITION OF EUROPEAN QUALIFICATIONS)
REGULATIONS 2011**

2011 No. 2008

1. This explanatory memorandum has been prepared by Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 European law requires that people within the European Union should be able to move freely between Member States, and where they are entitled to work in a professional capacity in their home Member State, that they should be entitled practice that profession in other member states providing they meet certain criteria agreed by Member States. The purpose of this Statutory Instrument is to amend the way in which UK law sets out conditions for architects from other Member States to register to practice as an architect in the UK.

3. Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]

3.1 None

4. Legislative Context

4.1 The Architects Act 1997 (c.22) (“the Act”) provides for the regulation of architects and implements, in part, Directive 2005/36/EC (recognition of professional qualifications) (“the Directive”). Part II of the Act provides for the registration of architects enabling them to practise in the UK.

Section 4(1) deals with registration in Part I of the register and provides that a person is entitled to be registered if he holds such qualifications and has gained such practical experience as may be prescribed. Section 4(2A) of the Act sets out the necessary evidence a Directive–rights national must produce in order to satisfy section 4(1) and register in Part I of the register.

The Regulations amend section 4(2A) to ensure that evidence of formal qualifications obtained in other Members States and which provides access to the profession of architect in the relevant Member State is sufficient for the purposes of registration. This ensures compliance with the Directive.

The evidence of formal qualifications required under regulation 4(2A) is set in regulation 4A(1) which includes evidence of formal qualifications listed in point 5.7.1 of Annex V to the Directive.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State Andrew Stunell MP OBE has made the following statement regarding Human Rights:

In my view the provisions of the Architects (Recognition of European Qualifications) Regulations 2011 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 European law requires that the Member States enable freedom of movement for professionals. The way in which this is to be undertaken is set out in European directive 2005/36/EC on the Recognition of Professional Qualifications. The Directive deals with professions who have agreed harmonised minimum levels of training (including doctors, dentists, midwives, farriers and architects) by setting out specific conditions and procedures which need to be followed. For architects, this includes a detailed list of the information that a Member State can ask for from applicants in assessing whether they have the right to automatic registration.

7.2 This Statutory Instrument makes a minor technical change to the way in which the Government of the UK transposed (translated in to UK law) the requirements of the Professional Qualifications Directive for architects. The UK has decided to do this in response to concerns expressed by the European Commission that the words 'eligible to practise' and 'lawfully established' which were used when the Act was last amended in 2008 could be used at a future point in time to require documentation or evidence not set out within the Directive, and by doing so restrict access to practice as an architect in the UK for other Member State Nationals.

7.3 The European Commission and the UK Government are in full agreement as to the intention and application of the Directive in practice, and there is no evidence that the current wording of the Act has created any difficulties for architects from other Member States since it was put in place. However, in order to reassure the European Commission that this will not be the case in future, the UK is amending the relevant section of the Architects Act to remove reference to Eligibility and Legal Establishment.

7.4 In practice, existing UK procedures and guidance will not change, and architects from other Member States will continue to have the same freedom of movement once this amendment is made as they have done previously. This amendment is therefore unlikely to be of particular interest to the general public and will have no impact on the business of architects. The amendment

will however ensure that UK law is fully aligned with requirements of overarching European Law.

- Consolidation

7.5 The Department for Communities and Local Government does not intend to consolidate the Architects Act 1997.

8. Consultation outcome

8.1 A limited consultation of 8 weeks took place on the basis that this is a simple amendment of limited general public interest. The consultation was published on the Department for Communities and Local Government website on 1 March 2011 and closed on 25 April 2011. The Department wrote directly to the Royal Institute of British Architects, the Royal Institute of Architects in Scotland, the Royal Society of Architects in Wales, the Northern Ireland Executive, the Association of Consultant Architects, the Architects Registration Board, Consumer Focus and specific members of the public who had previously expressed interest in this area of policy in order to raise awareness of the consultation.

8.2 Six responses were received to the consultation, three from professional bodies and regulators, and three from members of the public.

8.3 Professional and regulatory bodies all agreed with the draft proposed amendment and no specific issues requiring further consideration were raised. Responses from members of the public raised a number of concerns to which DCLG has responded in writing and which are summarised below.

8.4 Concern was expressed that costs will arise to business in checking qualifications as a result of the amendment – this is not the case as existing procedures for the regulatory body, the Architects Registration Board will remain as they are prior to amendment and there will be no additional cost to business.

8.5 Respondents also indicated their concern that architects who have different and potentially less demanding criteria to practice as an architect in their home Member State would be entitled to register and practice in the UK. It was suggested that this could create problems for consumers in identifying competent professionals, generate an influx of migrant architects impacting on UK architect's business and creates an uneven playing field for UK architects and educational institutions.

8.6 We have considered these views carefully. The amendments to the Act set out in the Regulations will not materially change the rights of architects from other Member States which have been in effect under the Qualifications Directive since October 2007. The concerns set out by respondents relate primarily to the nature of the Directive itself rather than the actual impact of the proposed amendment, and whilst we have written to respondents to

address these concerns we do not consider that they are sufficient to require revision of the Regulations.

9. Guidance

9.1 This Statutory instrument relates directly to architects from other member States seeking to register in the UK. Guidance for applying for registration is available from the UK Competent Authority, the Architects Registration Board who can be contacted at the following address;

The Architects Registration Board
8 Weymouth Street,
London,
W1W 5BU

e-mail: info@arb.org.uk
website: www.arb.org.uk
tel: 0207 580 5861

10. Impact

10.1 There will be no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As the UK's competent authority The Architects Registration Board will identify and report any material impact of the amendment to the Department for Communities and Local Government.

13. Contact

Richard Harral at the Department for Communities and Local Government
Tel: 0303 44 41778 or email: Richard.harral@communities.gsi.gov.uk can answer any queries regarding the instrument.