STATUTORY INSTRUMENTS

2008 No. 1331

ARCHITECTS

The Architects (Recognition of European Qualifications etc and Saving and Transitional Provision) Regulations 2008

Made - - - -	*19th May 2008*
Laid before Parliament	*27th May 2008*
Coming into force - -	*20th June 2008*

The Secretary of State is designated(**1**) for the purposes of section 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.

She makes the following Regulations under the powers conferred by that section, as read with paragraph 1A of Schedule 2(**3**) to the 1972 Act.

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State that it is expedient for the references to an Annex to Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications(**4**) to be construed as references to the Annex as amended from time to time.

Citation and commencement

1. These Regulations may be cited as the Architects (Recognition of European Qualifications etc and Saving and Transitional Provision) Regulations 2008 and shall come into force on 20th June 2008.

Amendment of Architects Act 1997

2. The Architects Act 1997(**5**) is amended in accordance with regulations 3 to 23.

(**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**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).
(**4**) OJ No L 255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No L 363 of 10.12.2006, p.141. Directive 2005/36/EC has been extended to the European Economic Area through Decision of the EEA Joint Committee No. 142/2007 on 26th October 2007.
(**5**) 1997 c. 22.

Designation of Architects Registration Board as competent authority

3. In Part 1, after section 1 (the Board), insert—

"**1A Designation of the Board as competent authority**

(1) The Board is designated as the competent authority in the United Kingdom for the purposes of the Directive so far as relating to architects.

(2) The designation under subsection (1) does not extend to the awarding of degrees, diplomas or other qualifications in architecture.

(3) Accordingly, the Board shall in the United Kingdom carry out (in particular) the mutual-recognition functions so far as relating to architects.

(4) The carrying-out of the following functions in the United Kingdom is not entrusted to the Board by subsection (3)—

(a) the function of awarding degrees, diplomas or other qualifications in architecture;

(b) any other mutual-recognition functions the carrying out of which, so far as relating to architects, is entrusted to the Board or any other person by or under any enactment other than this section.

(5) In this section "mutual-recognition functions" means the functions specified in the Directive that a Member State, in giving effect to the Directive, must or may cause to become functions of the State's competent authorities.".

Functions of the Registrar

4. In section 2 (the Registrar), after subsection (3), insert—

"(3A) Where functions of a competent authority under the Directive are exercised by the Registrar, he exercises them on behalf of the Board.".

The Register

5. In section 3 (the Register), after subsection (1), insert—

"(1A) The Register shall consist of two Parts, to be known as Part 1 and Part 2.".

Registration in Part 1 of the Register: general

6.—(1) In section 4 (registration: general)—

(a) for the side-note, substitute "Registration in Part 1 of the Register: general";

(b) in subsection (1), after "registered" insert "in Part 1 of the Register";

(c) for subsections (2A) and (2B)(**6**), substitute—

"(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

(**6**) Subsections (2A) and (2B) were inserted by S.I. 2002/2842.

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

(b) he produces to the Registrar a certificate, awarded by a relevant European state other than the United Kingdom, that attests that Article 48(2) of the Directive (authorisation to use the title of architect by reason of being especially distinguished by quality of work in the field of architecture) applies to him; or

(c) he is a person—

(i) whose case falls within regulation 3(9)(a), (b), (c) or (e) of the European Communities (Recognition of Professional Qualifications) Regulations 2007,

(ii) to whom regulations 20 to 26 of those Regulations apply by reason of operation of regulation 3(4) of those Regulations, and

(iii) who is permitted to pursue the profession of architect in the United Kingdom by virtue of Part 3 of those Regulations (having, in particular, successfully passed any aptitude test that he may be required to undertake pursuant to that Part of those Regulations).”(**7**).

(2) In subsections (4)(a) and (6)—

(a) before “the Register” insert “Part 1 of”; and

(b) after “registered” insert “in pursuance of this section”.

(3) After subsection (6), insert—

“(7) For the purposes of subsection (2A)(a), evidence is to be treated as issued in a relevant European State if it is issued in a country (or former country) whose territory at any time consisted of, or included, the whole or part of the territory of that State.”.

Registration in Part 1 of the Register: European qualifications

7. For section 5 (registration: EEA qualifications), substitute—

“**4A Registration in Part 1 of the Register: European qualifications**

(1) The descriptions referred to in section 4(2A)(a) are—

(a) evidence of formal qualifications listed in point 5.7.1 of Annex V to the Directive (qualifications in architecture satisfying the minimum training conditions mentioned in Article 46 of the Directive, including training which is, under Article 22(a), to be treated as meeting those conditions), accompanied, where appropriate, by the certificate listed in relation to that evidence in the column of that point of that Annex entitled “Certificate accompanying the evidence of qualifications”;

(b) evidence of formal qualifications as an architect which is required to be recognised under paragraph 3, 4 or 5 of Article 23 of the Directive (recognition of qualifications issued by the former Czechoslovakia, former Soviet Union, and former Yugoslovia), accompanied by—

(i) such attestation in respect of that evidence as is mentioned in that paragraph, and

(ii) such a certificate as is required by the second sub-paragraph of that paragraph;

(7) S.I. 2007/2781.

(c) evidence of training which is required by paragraph 1 of Article 47 of the Directive to be recognised as satisfying Article 21 of the Directive (training provided by 'Fachhochschulen' in the Federal Republic of Germany), accompanied by such a certificate (certificate as to 4 years' post-training experience) as is mentioned in that paragraph;

(d) evidence of training which is required by paragraph 2 of Article 47 of the Directive to be recognised as satisfying Article 21 of the Directive (training as part of social betterment schemes or part-time university studies), accompanied by evidence of—

(i) having passed such an examination as is mentioned in that paragraph, and

(ii) having worked as mentioned in that paragraph (7 years' supervised work in the field of architecture);

(e) evidence of formal qualifications which is required by paragraph 1 of Article 49 of the Directive to be recognised by the United Kingdom (acquired rights: recognition of evidence of qualifications listed in Annex VI to the Directive and awarded in other relevant European States; and recognition of evidence of qualifications issued in the German Democratic Republic and certified as equivalent to evidence so listed); and

(f) evidence of formal qualifications in the form of a certificate which is required to be recognised by paragraph 2 of Article 49 of the Directive (acquired rights: rules governing the access to and pursuit of the activities of an architect as of dates specified for individual Member States).

(2) Where a person applies for registration in pursuance of section 4 and, in doing so, relies on subsection (2A) of that section—

(a) the Registrar may, for the purposes of deciding whether the person is entitled to be registered in pursuance of section 4, demand any documents within Annex VII to the Directive and may, where the demand relates to a document within point 1(d), (e) or (f) of that Annex, treat the demand as unsatisfied if the document submitted to the Registrar in response to the demand is more than 3 months old when submitted;

(b) in the event of justified doubts as to whether the person is entitled to be registered in pursuance of section 4, the Registrar may require from the competent authorities of a relevant European State confirmation of the authenticity of the attestations and evidence of formal qualifications awarded in that other relevant European State, as well as confirmation of the fact that the person fulfils the minimum training conditions set out in Article 46 of the Directive (including training which is, under Article 22(a), to be treated as meeting those conditions);

(c) in case of justified doubt as to whether the person is entitled to be registered in pursuance of section 4, where evidence of formal qualifications has been issued by a competent authority in a relevant European State and includes evidence as to training received in whole or in part in an establishment legally established in the territory of another relevant European state, the Registrar shall be entitled to verify with the competent authority in the relevant European State of origin of the award—

(i) whether the training course at the establishment which gave the training has been formally certified by the educational establishment based in the relevant European State of origin of the award;

(ii) whether the evidence of formal qualifications issued is the same as that which would have been awarded if the course had been followed entirely in the relevant European State of origin of the award; and

(iii) whether the evidence of formal qualifications confers the same professional rights in the territory of the relevant European State of origin of the award.

(3) Subsection (4) applies to a person who is registered in Part 1 of the Register in pursuance of section 4 in reliance on subsection (2A) of that section.

(4) The person, when using his academic title or any abbreviation of it—

(a) may express the title or abbreviation in the language, or one of the languages, of the relevant European State in which the body conferring the title is located;

(b) must follow the title or abbreviation with the name and location of the body conferring the title.”.

Registration in Part 2 of the Register: Directive-rights nationals providing services

8.—(1) Before section 6, insert—

“**5A Registration in Part 2 of the Register: Directive-rights nationals providing services**

(1) Schedule 1A (registration of person lawfully established as an architect in a relevant European State and wishing to provide services in the United Kingdom on a temporary and occasional basis) has effect.

(2) No fee shall be charged for registration in Part 2 of the Register.

5B Titles to be used by persons registered in Part 2 of the Register

(1) Where a person is registered in Part 2 of the Register, the Registrar must in accordance with this section record the person’s professional title against the person’s name in that Part of the Register.

(2) If the person satisfies the Registrar that the person would be entitled to be registered in Part 1 of the Register were the person to apply to be registered in that Part, the professional title to be recorded for the person shall be “architect”.

(3) In any other case—

(a) the professional title to be recorded for the person shall be as it is in the relevant European State in which the person is established as an architect,

(b) that title shall be recorded in the official language, or one of the official languages, of that State, and

(c) if the title that is to be recorded in accordance with paragraphs (a) and (b) is “architect” or is confusingly similar to “architect”, the title to be recorded for the person shall be the title that is to be recorded in accordance with paragraphs (a) and (b) followed by the name of that State in brackets.

5C Information to be given to recipients of the service

(1) Subsection (2) applies to a person (“P”) if—

(a) P is entitled to be registered in Part 2 of the Register, and

(b) P’s professional title falls to be recorded in that Part of the Register in accordance with section 5B(3).

(2) Before P provides any services as an architect in the United Kingdom to another person, P shall give to that person the following information in writing—

(a) if P is registered in a commercial register or similar public register, the register in which he is registered, his registration number, or equivalent means of identification contained in that register;

(b) if the activity is subject to authorisation in the relevant European State in which P is established, the name and address of the competent supervisory authority;

(c) any professional association or similar body with which P is registered;

(d) P's professional title or, where no such title exists, P's formal qualification and the State in which it was awarded;

(e) if P performs an activity which is subject to VAT, the VAT identification number referred to in Article 22(1) of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment; and

(f) details of any insurance cover or other means of personal or collective protection with regard to professional liability which P has.

5D Administrative co-operation with other relevant European States

(1) Where a person seeks registration in Part 2 of the Register, re-registration in that Part or continuation of registration in that Part, the Registrar may ask the competent authorities of the relevant European State where that person is established as an architect, for each provision of services, to provide information relevant to the legality of that person's establishment and his good conduct, as well as the absence of any disciplinary or criminal sanctions of a professional nature.

(2) Where a competent authority of a relevant European State other than the United Kingdom requests information of the kind described in subsection (1) in respect of a registered architect who is established in the United Kingdom and who wishes to provide services in that relevant European State, the Board shall provide the information in accordance with the provisions of Article 56 of the Directive.

(3) The Registrar may make enquiries of registered persons where the Registrar considers it necessary to do so for the purposes of enabling the Board to discharge its duties under subsection (2).

(4) Where a registered person receives enquiries under subsection (3), the person shall reply and, in replying, shall use the person's best endeavours to assist the Registrar.

(5) The power under subsection (3) is not to be taken to prejudice any other power to make enquiries of registered persons.

5E Complaints by recipients of services

(1) In subsections (2) and (3) "service complaint" means a complaint by a recipient of services made against a person in respect of services provided, by that person as an architect on a temporary and occasional basis, in any relevant European State other than the relevant European State where that person is lawfully established as an architect.

(2) The Board shall ensure the exchange with other competent authorities of all information necessary for service complaints to be correctly pursued.

(3) Where the Registrar knows the outcome of a service complaint but it appears to the Registrar that the person who made the complaint does not or may not know the outcome, the Registrar shall inform the person of the outcome of the complaint."(**8**).

(2) After Schedule 1, insert Schedule 1A as set out in the Schedule to these Regulations.

Registration: further procedural requirements

9. In section 6 (registration: further procedural requirements)—

(a) in subsection (1), for "pursuance of section 4 or 5" substitute "Part 1 of the Register";

(b) after subsection (2), insert—

"(2A) The Board may require an applicant for registration in Part 1 of the Register to pay a fee for taking an aptitude test which the applicant is required by the Board to take under regulation 25(1)(b) of the European Communities (Recognition of Professional Qualifications) Regulations 2007 on the basis that the circumstances are as mentioned in regulation 25(3)(b) of those Regulations (education and training received by the applicant covers substantially different matters from that required in the United Kingdom)."(**9**);

(c) in subsection (3), for "pursuance of section 4 or 5" substitute "Part 1 of the Register";

(d) after subsection (3) insert—

"(3A) The reference in subsection (3) to an application for registration in Part 1 of the Register does not include an application for registration in that Part made by a Directive-rights national who, in making the application, relies on section 4(2A).

(3B) Where a Directive-rights national applies to be registered in Part 1 of the Register and, in doing so, relies on section 4(2A), the Board shall—

(a) acknowledge receipt of the application within one month of receipt; and

(b) inform the applicant of any missing document required for the purposes of the application.

(3C) The Registrar shall deal expeditiously with all applications for registration.";

(e) in subsection (4)(**10**) after "applicant" insert "for registration in Part 1 of the Register";

(f) for subsection (4A), substitute—

"(4A) A notice under subsection (4) shall be served—

(a) in the case of an application by a person who in making the application—

(i) relies on subsection (1)(a) of section 4 without also relying on subsection (2A), or

(ii) relies on section 4(2A),

within three months beginning with the date on which the application is made;

(b) in any other case, within six months beginning with the date on which the application is made.";

(g) in subsection (4B), for "under section 5 or to which section 4(2B) applies," substitute "by a person who in making the application relies on section 4(2A)"; and

(h) omit subsection (5).

(**8**) Council Directive 77/388/EEC of 17 May 1977: OJ No L 145, 13.6.97, p.l, last amended by Council Directive 2006/69/EC, OJ No L 221, 12.8.06, p.9.

(**9**) S.I. 2007/2781.

(**10**) Subsections (4), (4A) and (4B) of section 6 were substituted for subsection (4) by S.I. 2002/2842.

Issuing of certificates of architectural education

10. After section 6 insert—

"**Issuing of certificates of architectural education**

6A.—(1) Where a person requests the Board to issue a certificate of architectural education confirming that the person's training as an architect—

(a) meets the minimum training conditions in Article 46 of the Directive,

(b) gives that person entitlement under section 4 to be registered in Part 1 of the Register, or

(c) includes prescribed or equivalent qualifications,

the Board may issue such a certificate to that person if the training does meet those conditions, gives that entitlement or includes those qualifications.

(2) The Board may require a person making a request under subsection (1) to pay a fee of a prescribed amount.".

Penalty for obtaining registration or recognition by false representation

11. In section 7 (penalty for obtaining registration by false representation)—

(a) in the side-note, after "registration" insert "or recognition"; and

(b) for section 7(1), substitute—

"(1) A person commits an offence if the person intentionally—

(a) becomes or attempts to become registered under this Act, or

(b) does any of the things mentioned in subsection (1A) anywhere in or outside the United Kingdom.

(1A) Those things are—

(a) making to the Board or to the Registrar,

(b) producing to the Board or to the Registrar,

(c) causing to be made to the Board or to the Registrar, or

(d) causing to be produced to the Board or to the Registrar

any false or fraudulent representation or declaration (whether oral or written).".

Retention of name in Register

12. In section 8 (retention of name in Register)—

(a) before "the Register" insert "Part 1 of" in each place; and

(b) in subsection (3)(a), omit "or 5".

Competence to practise

13. In section 9 (competence to practise)—

(a) before "the Register" insert "Part 1 of" in each place; and

(b) in subsection (1)(a), omit "or 5".

Disqualification in a relevant European State

14. In section 10 (removal from Register of name of person disqualified in an EEA State)—

(a) in the side-note, for "an EEA State" substitute "a relevant European State";

(b) in subsection (1), after "remove a person's name from" insert "Part 1 of"; and

(c) for paragraph (a) of subsection (1) substitute—

"(a) the person relied on section 4(2A) in making the application that led to the person's name being entered in Part 1 of the Register;

(aa) at the time when the person's name was entered in Part 1 of the Register, there was a disqualifying decision in force in respect of the person in a relevant European State other than the United Kingdom;".

Failure to notify change of address

15. In section 11 (failure to notify change of address), for "registered person" substitute "person registered in Part 1 of the Register".

Removal of list of visiting EEA architects

16. Omit section 12 (visiting EEA architects) and the italic heading "List of visiting EEA architects" preceding that section.

Disciplinary orders

17. Omit section 15(6) (disciplinary orders).

Application of discipline provisions to visiting EEA architects

18. Omit section 19 (application of discipline provisions to visiting EEA architects) and the italic heading preceding that section.

Use of title "architect"

19. In section 20 (use of title "architect")—

(a) in subsection (1), for the words "under this Act" substitute "in Part 1 of the Register";

(b) in subsection (3)(a) and (b), for the words "registered person" substitute "person registered in Part 1 of the Register"; and

(c) for subsection (5) substitute—

"(5) Subsection (1) does not prevent a person registered in Part 2 of the Register using—

(a) the title recorded for the person in that Part; or

(b) any other title that could have been recorded for the person in that Part.".

Appeals

20. For sections 22 (appeals) and 22A(**11**), substitute—

(**11**) Section 22A was inserted by S.I. 2002/2842.

"**22 Appeals**

(1) A person may appeal to the High Court or, in Scotland, to the Court of Session if he is aggrieved by—

(a) refusal of his application for registration in Part 1 of the Register;

(b) failure of the Registrar to comply with section 6(4);

(c) his name not being re-entered in, or his name being removed from, Part 1 of the Register by virtue of section 9;

(d) the Board's ordering under section 10 that the Registrar remove his name from Part 1 of the Register; or

(e) the making of a disciplinary order in relation to him.

(2) Subject to subsection (3), an appeal under subsection (1)(a), (c), (d) or (e) must be made not later than three months after the date on which notice of the decision or order concerned is served on the person.

(3) Where an appeal under subsection (1)(a) is made by a person who relied on subsection (2A) of section 4 in applying for registration in pursuance of that section, the appeal must be made not later than four months after the date on which notice of the refusal is served on the person.

(4) The time limits for making an appeal under subsection (1)(b) are—

(a) where the appeal is made by a person who relied on subsection (2A) of section 4 in applying for registration in pursuance of that section, within seven months, and

(b) where the appeal is made by a person who, in applying for registration in pursuance of that section, relied on subsection (1)(a) of that section without also relying on subsection (2A) of that section, within six months,

beginning with the date on which the person's application for registration is made.

(5) An appeal under subsection (1)(b) to which subsection (4) does not apply must be made within nine months beginning with the date on which the person's application for registration is made.

(6) If a person claims to be entitled to be registered in Part 2 of the Register but the person's name is not entered in that Part, the person may appeal to a county court or, in Scotland, to the sheriff.

(7) On an appeal under this section the court concerned may make any order which appears appropriate, and no appeal shall lie from any decision of a court on such an appeal.".

Administrative co-operation and confidentiality

21. After section 22 (appeals), insert—

"**22B Administrative co-operation**

(1) The Board, in its capacity as competent authority for the purposes of the Directive, is to—

(a) work in close collaboration with competent authorities of other relevant European States, and

(b) provide assistance to competent authorities of other relevant European States in accordance with and in order to facilitate the application of the Directive.

(2) The Board is to exchange professional-regulation information about—

(a) registered persons who are Directive-rights nationals, or

(b) Directive-rights nationals who have made an application for registration in the Register,

with competent authorities of other relevant European States.

(3) In this section "professional-regulation information" means information regarding—

(a) disciplinary action taken,

(b) criminal sanctions imposed, or

(c) any other serious, specific circumstances,

where the action is, or the sanctions or circumstances are, likely to have consequences for the pursuit of the profession of architect by a person.

(4) If in any case the Board receives professional-regulation information from a competent authority of another relevant European State, the Board—

(a) is responsible for investigating and establishing the position in the case, and

(b) is to pass on its conclusions in the case to a competent authority in each relevant European State in which the person concerned is established as an architect or (without being established) is providing services as an architect.

(5) The Board may make enquiries of registered persons where the Board considers it necessary to do so for the purposes of enabling it to discharge its duties under subsections (1)(b) and (4)(a).

(6) Where a registered person receives enquiries under subsection (5), the person shall reply and, in replying, shall use the person's best endeavours to assist the Board.

(7) The power under subsection (5) is not to be taken to prejudice any other power to make enquiries of registered persons.

22C Confidentiality

(1) The Board, the Registrar, and persons acting on behalf of either of them, are prohibited from disclosing information to which subsection (2) applies.

(2) This subsection applies to information if—

(a) the information is received in the course of the carrying-out of functions of the Board or the Registrar;

(b) the functions are functions under the Directive or under any enactment giving effect to the Directive; and

(c) the information—

(i) is provided by a competent authority of another relevant European State, or

(ii) relates to an application made by a Directive-rights national for registration in the Register.

(3) Subsection (1) does not apply to disclosure which is—

(a) to the Secretary of State; or

(b) necessary in order to facilitate the carrying-out of functions of the Board, or of functions of the Registrar, under this Act or any other enactment.

(4) An authority within subsection (5) must, so far as it is within the authority's power to do so, ensure the confidentiality of information which, in the course of the carrying-out of functions of the authority under the Directive or under any enactment giving effect to the Directive, is disclosed by or on behalf of the authority to a competent authority of another relevant European State.

(5) The authorities within this subsection are—

(a) the Board; and

(b) the Registrar.”.

Interpretation

22.—(1) In section 25(1)(**12**) (interpretation)—

(a) for the definition of “competent authority”, substitute—

““competent authority” means any authority or body designated by a relevant European State for the purposes of the Directive as competent to—

(a) issue, or receive, evidence of qualifications or other information or documents, or

(b) receive applications, and take the decisions, referred to in the Directive,

in connection with the profession of architect;;”;

(b) for the definition of “the Directive”, substitute—

““the Directive” means Council Directive 2005/36/EC on the recognition of professional qualifications, and—

(a) any reference to the Directive includes (without prejudice to the operation of section 20A of the Interpretation Act 1978) a reference to the Directive as extended by the EEA Agreement (see the amendments made to that Agreement by Decision of the EEA Joint Committee No. 142/2007 on 26th October 2007), and

(b) any reference to an Annex to the Directive is, except where the reference to the Directive is to the Directive as extended by the EEA Agreement, a reference to the Annex as amended from time to time;

“Directive-rights national” means—

(a) a national of a relevant European State other than the United Kingdom,

(b) a national of the United Kingdom who is seeking access to, or is pursuing, the profession of architect by virtue of an enforceable Community right, or

(c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the profession of architect, no less favourably than a national of a relevant European State,

but does not include a person who, by virtue of Article 2 of Protocol No. 3 (Channel Islands and Isle of Man) to the Treaty of Accession, is not to benefit from Community provisions relating to the free movement of persons and services;(**13**);”(**13**);

(c) for the definition of “disqualifying decision in another EEA State” substitute—

““disqualifying decision”, in relation to any person, means a decision which—

(a) is made by a competent authority of a relevant European State other than the United Kingdom, and

(**12**) Section 25(1) was amended by S.I. 2002/2842.

(**13**) Interpretation Act 1978, c. 30. Section 20A was inserted by section 25(1) of the Legislative and Regulatory Reform Act 2006 (c. 51).

(**13**) Interpretation Act 1978, c. 30. Section 20A was inserted by section 25(1) of the Legislative and Regulatory Reform Act 2006 (c. 51).

(b) has the effect in that State that the person is no longer lawfully established as an architect there or that the person is prohibited (even temporarily) from practising as an architect there;";

(d) omit the definitions of "EEA State", "list of visiting EEA architects" and "national";

(e) after the definition of "the Registrar" insert—

""relevant European State" means an EEA State;" and

(f) omit the word "and" at the end of the definition of "suspension order", and after that definition insert—

""third country" means a country other than a relevant European State; and".

(2) Omit section 25(2)(**14**).

The Board and its committees

23. In Schedule 1 (the Board and its committees)—

(a) for "registered persons" in paragraph 2(3) substitute "persons registered in Part 1 of the Register";

(b) for "registered person" in paragraphs 3(2), 6(1), 15(1A)(a) and (2)(**15**) substitute "person registered in Part 1 of the Register"; and

(c) for "registered persons," in paragraph 13(d)(**16**) substitute "persons registered in Part 1 of the Register".

Transitional provisions

24.—(1) If immediately before 20th June 2008 a person is—

(a) enrolled on the list of visiting EEA architects, the person is entitled as from 20th June 2008 to be registered in Part 2 of the Register of Architects; or

(b) registered in the Register of Architects, the person is entitled as from 20th June 2008 to be registered in Part 1 of the Register of Architects.

(2) Where an application—

(a) to be registered in the Register of Architects, or

(b) to be enrolled on the list of visiting EEA architects,

is made before 20th June 2008 but is not determined before that day, the Registrar of Architects shall deal with the application according to the rules in force when the application was made.

(3) If an application to which paragraph (2)(a) applies is successful, the Registrar of Architects shall register the applicant in Part 1 of the Register of Architects, and shall inform the applicant that he has done so.

(4) If an application to which paragraph (2)(b) applies is successful, the applicant is entitled, as from the time when the decision on the application takes effect, to be registered in Part 2 of the Register of Architects.

(5) The Registrar of Architects shall give effect to entitlement under paragraph (1) or (4), and shall inform the person concerned of the registration.

(6) For the purposes of paragraphs 4, 5(5) and 6 to 8 of Schedule 1A to the Architects Act 1997, entitlement under paragraph (1)(a) or (4) of this regulation shall be treated as entitlement under that

(**14**) Section 25(2) was inserted by S.I. 2002/2842.
(**15**) In paragraph 15, sub-paragraph (1A) was substituted by, and sub-paragraph (2) was inserted by, S.I. 2004/655.
(**16**) Paragraph 13 was substituted by S.I. 2004/655.

Schedule that ceases, by operation of provisions of that Schedule, at the end of the period (or at the end of the latest of the periods) for which the person would (apart from these Regulations) have been enrolled on the list of visiting EEA architects.

(7) Paragraph 4(8)(b) of that Schedule shall apply in relation to renewal of entitlement under paragraph (1)(a) or (4) of this regulation—

(a) as if before "substantiates" there were inserted "either has never previously been supplied to the Registrar or", and

(b) with the omission of "(whether under paragraph 3 or this paragraph)".

Revocation

25. In the Architects' Qualifications (EC Recognition) Order 2002(**17**), the following are revoked—

(a) Articles 3, 5 and 6(2), and

(b) in Article 6(1), the words "(which becomes subsection (1))".

Savings

26.—(1) In this regulation—

"the old law" means the Architects Act 1997 as it stood immediately before the coming into force of these Regulations;

"the Register" means the Register of Architects;

"the saved law" means the old law as saved by paragraph (2);

"the Swiss Agreement" means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999 and which came into force on 1st June 2002(**18**).

(2) The old law continues (despite the amendments and revocations made by these Regulations) to have effect for the purpose of implementing the Swiss Agreement so far as that Agreement relates to Directive 85/384/EEC(**19**), but this is subject to paragraphs (3) and (4).

(3) The saved law has effect with the following modifications—

(a) modifications corresponding to the amendments made by regulations 5, 11, 12(a), 13(a), 15, 17, 18, 19(a) and (b) and 23;

(b) the omission of section 12(1) of the saved law;

(c) as if references in the saved law to the list of visiting EEA architects were references to Part 2 of the Register and as if references in the saved law to enrolment on that list were to registration in that Part;

(d) as if section 20(5) of the saved law said—

"(5) A person registered in Part 2 of the Register may practise or carry on business under a name, style or title containing the word "architect" while visiting the United Kingdom during the period, and in respect of the services, for which the person's registration is effective."; and

(**17**) S.I. 2002/2842. Article 3 inserted section 4(2A) and (2B) into the Architects Act 1997, which have been substituted by regulation 6(c) of these Regulations.
(**18**) OJ No L 114, 30.04.02, p.6.
(**19**) OJ No L 223, 21.8.85, p.15, last amended by Council Directive 2006/100/EC, OJ No L 363, 20.12.06, p.141.

(e) as if in section 25(2) of the saved law "any" were substituted for the words from "a right conferred" to "any other".

(4) If entitlement to be registered in the Register arises under section 4 or 5 of the saved law on or after 20th June 2008, effect is to be given to the entitlement by registering the person concerned in Part 1 of the Register.

(5) Regulation 24 has effect subject to paragraph (2), so that (in particular)—

(a) if a person having an entitlement under regulation 24(1) would not have been registered or enrolled before 20th June 2008 but for the Swiss Agreement (and any enactment implementing that Agreement), or

(b) if a successful application to which regulation 24(2) applies would not have been successful but for that Agreement (and any enactment implementing it),

the registration of the person or applicant in Part 1 or 2 of the Register takes effect under the saved law (and regulation 24(6) and (7) therefore cannot apply in the particular case).

Signed by authority of the Secretary of State for Communities and Local Government

Iain Wright
Parliamentary Under Secretary of State
Department for Communities and Local Government

19th May 2008

SCHEDULE Regulation 8(2)

"SCHEDULE 1A Section 5A(1)

VISITING ARCHITECTS FROM RELEVANT EUROPEAN STATES

Application and interpretation

1. This Schedule applies to a Directive-rights national who is lawfully established as an architect in a relevant European State other than the United Kingdom.

2.—(1) In this Schedule—

(a) "visiting practitioner" means a person to whom this Schedule applies;

(b) "home State", in relation to a visiting practitioner, means the relevant European State in which the practitioner is lawfully established as an architect; and

(c) a reference to the provision of occasional services is a reference to the provision in the United Kingdom, on a temporary and occasional basis, of services as an architect.

(2) Sub-paragraph (3) applies where, for purposes of this Schedule, it falls to be assessed whether the provision of services is on a temporary and occasional basis.

(3) The temporary and occasional nature of the provision of the services shall be assessed case by case, in particular in relation to its duration, its frequency, its regularity and its continuity.

Entitlement to be registered in respect of provision of occasional services: first year

3.—(1) A visiting practitioner who proposes to provide occasional services for the first time is entitled to be registered in Part 2 of the Register if the practitioner sends or produces to the Registrar—

(a) the required declaration, and

(b) the other required documents,

but paragraph 5 contains provision about the duration of entitlement under this sub-paragraph.

(2) The Registrar shall give effect to entitlement under sub-paragraph (1), except that the Registrar may refuse to do so if, even though there is at least one other State in which the visiting practitioner—

(a) is lawfully established as an architect, and

(b) is not prohibited (even temporarily) from practising as an architect,

there is also at least one other State where a disqualifying decision is in force in respect of the practitioner; and in this sub-paragraph "other State" means a relevant European State other than the United Kingdom.

(3) For the purposes of sub-paragraph (1) "the required declaration" is a written declaration that—

(a) states the practitioner's wish to provide occasional services, and

(b) contains details of the insurance cover, or other means of personal or collective protection, that the practitioner has with regard to professional liability.

(4) For the purposes of sub-paragraph (1) "the other required documents" are—

(a) if the practitioner is a national of a relevant European State, proof of nationality;

(b) if the practitioner is not a national of a relevant European State, proof of the Community right by virtue of which the practitioner is a Directive-rights national;

(c) evidence certifying successful completion of any professional training undertaken by the practitioner that is relevant to practise as an architect;

(d) evidence of any actual and lawful pursuit of the profession of architect undertaken by the practitioner in any relevant European State;

(e) a certificate (or certificates) issued by a competent authority in the practitioner's home State confirming—

(i) that the practitioner is lawfully established as an architect in that State, and

(ii) that the practitioner is not prohibited (whether on a permanent or temporary basis) from practising as an architect there.

(5) A declaration under sub-paragraph (3) may be supplied by any means.

Registration in respect of provision of occasional services after first year

4.—(1) Sub-paragraph (2) applies where the Registrar receives the required renewal documents from a visiting practitioner who is entitled under this Schedule to be registered in Part 2 of the Register.

(2) The visiting practitioner continues to be entitled to be registered in Part 2 of the Register, but paragraph 5 contains provision about the duration of entitlement continued under this sub-paragraph.

(3) Sub-paragraph (4) applies where the Registrar receives the required renewal documents from a visiting practitioner who—

(a) is not entitled under this Schedule to be registered in Part 2 of the Register, but

(b) has been previously entitled under this Schedule to be registered in that Part.

(4) The visiting practitioner is once again entitled to be registered in Part 2 of the Register, but paragraph 5 contains provision about the duration of entitlement continued under this sub-paragraph.

(5) The Registrar shall give effect to entitlement under sub-paragraph (2) or (4).

(6) In relation to a visiting practitioner "the required renewal documents" are—

(a) a renewal declaration; and

(b) each evidence of change document (if any).

(7) In this paragraph "renewal declaration", in relation to a visiting practitioner, means a written declaration that—

(a) states the practitioner's wish to provide occasional services in a further year; and

(b) contains details of the insurance cover, or other means of personal or collective protection, that the practitioner has with regard to professional liability.

(8) Where a document—

(a) is, in relation to a visiting practitioner, one of the other required documents for the purposes of paragraph 3(1), and

(b) substantiates a matter as respects which there has been a material change since the practitioner last (whether under paragraph 3 or this paragraph) supplied the then-current version of the document to the Registrar,

the version of the document current when under this paragraph the practitioner supplies a renewal declaration to the Registrar is an "evidence of change" document for the purposes of sub-paragraph (6)(b).

(9) A renewal declaration supplied under this paragraph may be supplied by any means.

Duration of entitlements to be registered in Part 2 of the Register

5.—(1) Unless an entitlement under paragraph 3 or 4(4) is continued (or further continued) by paragraph 4(2), the entitlement ceases at the end of the year that begins with the day after the day on which the Registrar received the documents whose receipt gave rise to the entitlement.

(2) Where an entitlement under paragraph 3 or 4(4) is continued (or further continued) by paragraph 4(2), the entitlement is extended so as to cease at the end of the year that begins with the day after the relevant day.

(3) For the purposes of sub-paragraph (2)—

(a) if the day on which the Registrar receives the documents whose receipt gives rise to the continuation (or further continuation) is an anniversary of the start day, "the relevant day" means the day on which the Registrar receives those documents;

(b) otherwise, "the relevant day" means the anniversary of the start day that is the first such anniversary to occur after the Registrar receives the documents whose receipt gives rise to the continuation (or further continuation).

(4) In sub-paragraph (3) "the start day", in relation to an entitlement under paragraph 3 or 4(4), means the day on which the Registrar receives the documents whose receipt gives rise to the entitlement.

(5) An entitlement under this Schedule to be registered in Part 2 of the Register ceases if—

(a) the visiting practitioner concerned becomes established in the United Kingdom as an architect; or

(b) it becomes the case—

(i) that the practitioner is not lawfully established as an architect in any of the other States, or

(ii) that the practitioner is prohibited (on a permanent or temporary basis) from practising as an architect in each other State in which the practitioner is lawfully established as an architect;

and here "other State" means a relevant European State other than the United Kingdom.

Deemed registration where person entitled to be registered is not registered

6. A visiting practitioner who is entitled under this Schedule to be registered in Part 2 of the Register, but who is not registered in that Part, shall be treated as registered in that Part.

Registrar's power to remove person's name from Part 2 of the Register

7.—(1) Sub-paragraph (3) applies where a person's entitlement under this Schedule to be registered in Part 2 of the Register ceases by reason of the operation of provisions of this Schedule.

(2) Sub-paragraph (3) also applies where—

(a) a visiting practitioner is lawfully established as an architect in a relevant European State other than the United Kingdom and is not prohibited (whether on a permanent or temporary basis) from practising as an architect there, and

(b) a disqualifying decision is made against the practitioner in a different relevant European State that is not the United Kingdom.

(3) If the person is registered in Part 2 of the Register, the Registrar may remove the person's name from that Part.

Saving for other powers to de-register or suspend registration

8. Paragraphs 3 to 7 are not to be taken to prejudice the application, in relation to persons registered in Part 2 of the Register on the basis of entitlement under this Schedule, of any other provision of this Act under which a registered person's name may be removed from Part 2 of the Register.

Registrar's duty to notify person appearing not to have entitlement

9. Where the Registrar receives documents from a person and it appears to the Registrar—

(a) that the documents were sent or produced to the Registrar for the purpose of establishing that the person is entitled to be registered, to continue to be registered or once again to be registered in Part 2 of the Register, but

(b) that the person is not so entitled,

the Registrar shall, as soon as may be reasonably practicable after the Registrar comes to be of that view, serve on the person written notice that the Registrar is of that view."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in part, Directive 2005/36/EC(**20**) ("the Directive") on the recognition of professional qualifications. The Directive is designed to remove obstacles to free movement of persons and services within the Community, 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 the automatic recognition of certain specified qualifications, and for a procedure for assessing other qualifications for the purpose of giving access to a profession. There is also a procedure to allow those wishing to provide services on a temporary and occasional basis to practise a profession on this basis.

The Directive replaces various other Directives which dealt with the recognition of professional qualifications for different professions, including the one which related to architects, Directive 85/384/EEC(**21**). The Directive restates the majority of the provisions contained in that Directive, but adds new provisions and makes many minor changes to the existing regime.

The Regulations implement, in part, the aspects of the Directive which concern architects. Those provisions of the Directive relating to architects which are not implemented by these Regulations are implemented by the European Communities (Recognition of Professional Qualifications) Regulations 2007(**22**) ("the General Systems Regulations").

The Regulations apply in relation to the Member States of the European Community and also in relation to the other European Economic Area States, Iceland, Liechtenstein and Norway (as Directive 2005/36/EC has been extended to the European Economic Area through Decision of the EEA Joint Committee No. 142/2007 on 26th October 2007). The Regulations use the term

(**20**) OJ No L 255, 30.9.05, p.22. Amended by Council Directive 2006/100/EC, OJ No L 363, 20.12.06, p.141.
(**21**) OJ No L 223, 21.8.85, p.15, last amended by Council Directive 2006/100/EC, OJ No L 363, 20.12.06, p.141.
(**22**) S.I. 2007/2781.

"relevant European State" to describe the Member States of the European Community plus Iceland, Liechtenstein and Norway.

The legislation which governs the regulation of architects and the use of the title "architect" in the United Kingdom is the Architects Act 1997(**23**) ("the Act"), and these Regulations amend the Act in order to give effect to the Directive. The Architects Registration Board ("the Board") is designated as the competent authority for the purposes of the Directive (regulation 3), and therefore the Board (or the Registrar where he is exercising functions of a competent authority, see regulation 4) is responsible for deciding whether the qualifications of nationals of relevant European States are to be recognised in the United Kingdom so as to allow access to the profession of architect.

Only persons registered in the Register of Architects ("the Register") may use the title of "architect" (see section 20 of the Act). The Register is, by these Regulations, split into two Parts, Part 1 and Part 2 (regulation 5). Part 2 is for those persons wishing to exercise their rights under the Directive to provide services as an architect on a temporary and occasional basis only.

The amendments to sections 4 and 5 of the Act (regulations 6 and 7) have the effect that nationals of a relevant European State relying on their rights under the Directive for recognition of their qualifications must make their applications for registration under new section 4(2A). Those persons entitled to automatic recognition of their qualifications under the Directive (set out in Chapter III of Title III) must rely on section 4(2A)(a) or (b), and those who wish to use the "generals systems" route to recognition under the Directive (set out in Chapter I of Title III) must rely on section 4(2A)(c) (and the process with which they must comply is that set out in the General Systems Regulations). Persons satisfying the appropriate part of section 4(2A) are to be treated as having an equivalent level of competence as a person applying for registration on the basis of possessing the qualifications and having gained the practical experience that the Board has prescribed under section 4(1)(a). Section 4A is substituted for section 5, and subsection (1) specifies the descriptions of the evidence of qualifications or training which must be given automatic recognition by Member States. By section 4(2A)(a), a person may only rely on this evidence to give automatic recognition where that person is lawfully established as an architect in his home State, or is eligible to practise as an architect in his home State.

New section 5A and Schedule 1A (regulation 8) provide for, among other things, who is entitled to be registered in Part 2, the procedure for registration (including the provision of a declaration by the person wishing to provide services), the duration of entitlement to be registered, and provision for deemed registration. Deemed registration is necessary because once a person has complied with the Directive and given the necessary documentation to the competent authority, that person is entitled to provide services regardless of whether or not the competent authority has completed assessing those documents and given effect to them by, in the case of architects, registration in the register. These provisions give effect to Title II of the Directive, on the free provision of services. New section 5B makes provision for the title which a person in Part 2 of the Register is entitled to use, and new section 5C provides for certain information to be given by a person registered in Part 2 of the Register to a recipient of any services as an architect provided by that person. Section 5D provides for there to be administrative co-operation by the Board with other competent authorities from other relevant European States.

New section 6A (regulation 10) makes clear that the Board has the power to issue certificates of architectural education in relation to a person's training as an architect, and provides for a fee to be prescribed. The amendments to section 7 (regulation 11) extend that provision so that it is an offence for a person to become or attempt to become recognised as entitled to practise as an architect in a relevant European State that is not the United Kingdom by making any false or fraudulent representation or declaration.

The amendments to section 9 (regulation 13) have the effect that the competence to practise of anyone seeking to be registered in Part 1 of the Register can be assessed by the Board.

(**23**) 1997 c. 22.

Section 12 is omitted (regulation 16), as Part 2 of the Register has replaced the list of visiting EEA architects. Section 19 is omitted (regulation 18) as it is unnecessary, as any person providing services temporarily is now entitled to be registered in Part 2 of the Register and therefore is subject to the disciplinary provisions which apply to all registered persons.

Amendments have been made to section 20 (regulation 19) so that only a person registered in Part 1 of the Register may practise or carry on business under the title of "architect". Provision has also been made so that a person registered in Part 2 may use the title recorded for the person in that Part, or any other title that could have been recorded for that person (a person registered in Part 2 who satisfies the Registrar that he would be entitled to automatic recognition of his qualifications if he were to apply for registration in Part 1, is entitled to be registered with the title of "architect").

Amendments have been made substituting new section 22 for sections 22 and 22A (regulation 20) to give effect to the new requirements of the Directive in relation to appeals. A new appeal right to a county court or, in Scotland, to the sheriff has been given to a person claiming to be entitled to be registered in Part 2, but whose name is not entered in that Part.

New sections 22B and 22C have been inserted (regulation 21). New section 22B requires the Board to co-operate with the competent authorities of relevant European States. Section 22C prohibits the disclosure of documents submitted to the Board and the Registrar and their staff and agents, subject to exceptions.

Section 25 is amended to include new definitions (regulation 22). Aspects of the definition of "the Directive" has been made ambulatory, to allow account to be taken of future amendments to the technical Annexes. The definition of "Directive-rights national" encompasses those who are entitled to rely on the rights in the Directive, namely nationals of relevant European States other than the United Kingdom, United Kingdom nationals who have an enforceable Community right (for example, because they have exercised their right to free movement and undertaken parts of their training in another relevant European State), and third country nationals who are entitled to be treated as if they were a national of a relevant European State because of an enforceable Community right (for example, third country spouses of relevant European State nationals).

Schedule 1 is amended so that only persons in Part 1 of the Register may elect, or be elected as, members of the Board (regulation 23).

Regulation 24 makes transitional provision for applications for registration made but not determined before 20th June 2008 (when these Regulations come into force), and for the names of persons in the list of visiting architects to be transferred to Part 2 of the Register.

Regulation 25 revokes certain provisions of the Architects' Qualifications (EC Recognition) Order 2002(**24**).

Regulation 26 makes savings in respect of the implementation of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999 and which came into force on 1st June 2002(**25**)) so far as it relates to the rights of persons under Directive 85/384/EEC, as the Agreement has not been amended so as to extend to the Directive. The procedures under the Architects Act 1997 for entitlement to registration in the Register and enrolment on the list of visiting EEA architects for persons reliant on rights under the Agreement are also preserved, although the entitlement will now be to registration in Part 1 or 2 of the Register respectively.

(**24**) S.I. 2002/2842.
(**25**) OJ No L 114, 30.04.02, p.6.