**EXPLANATORY MEMORANDUM TO**

**THE ARCHITECTS ACT 1997 (AMENDMENT) ORDER 2016**

**2016 No. 1088**

## 1. Introduction

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

## 2. Purpose of the instrument

2.1 This Order amends the Architects Act 1997 (the "Act") to update references to Council Directive 2005/36/EC on the mutual recognition of professional qualifications (OJ L 255, 30.9.2005, p.22) ("the Directive") as most recently amended and to substitute references to the latest implementing regulations.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None

***Other matters of interest to the House of Commons***

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

## 4. Legislative Context

4.1 The Directive establishes a system for the mutual recognition of professional qualifications which is intended to make it easier for EU citizens who are entitled to exercise a regulated profession (one requiring proof of specific professional qualifications such as an architect) in their home Member State to pursue the same profession in another host Member State. The Directive was first implemented in the United Kingdom by the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781) ("the 2007 Regulations").

4.2 The Directive establishes:

- a system of automatic recognition based on minimum harmonised training requirements for doctors, dentists, nurses, midwives, pharmacists, veterinary surgeons and architects
- a system of automatic recognition based on professional knowledge and experience for a variety of commercial and manufacturing activities
- a general system for the recognition of other regulated professional activities based on the principle of equivalence but with provision to require an applicant to take an aptitude test or complete an adaptation period of up to three years if there is a substantial difference between the level of professional training or experience required in the host and home States; and

- simplified procedures to enable individuals established in one Member State to provide professional services "on a temporary and occasional basis" in another host Member State.

4.3 The Directive has been amended on a number of occasions. The most recent amendments were made by Directive 2013/55/EU amending Council Directive 2005/36/EC on the mutual recognition of professional qualifications etc. (OJ L 354, 28.12.2013, p.132), and provided for the creation of a European professional card and allowed all citizens seeking the recognition of their professional qualifications to be able to deal with a single point of contact. These changes were implemented in the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059) ("the 2015 Regulations"), which revoked the 2007 Regulations.

4.4 The Architects Registration Board ("ARB") established by the Architects Act 1997 ("the Act") is the UK competent authority for the purposes of the Directive in relation to architects. As a result of the changes described above, certain references in the Act to the Directive and to the 2007 Regulations need to be amended in order to correspond the reordering and updating of the provisions referred to in the Directive as now amended and in the 2015 Regulations. They relate to registration onto Part 1 of the Register of Architects.

## 5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 This instrument applies to the United Kingdom.

## 6. European Convention on Human Rights

6.1 The Minister of State for Housing, Planning and London Gavin Barwell has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Architects Act 1997 (Amendment) Order 2016 are compatible with the Convention rights.

## 7. Policy background

***What is being done and why***

7.1 The Act provides for the ARB to be an independent statutory regulator of all UK registered architects. The ARB has a duty to regulate the professional use of the architectural title including those rights and obligations as set out in the Directive for which ARB acts as the UK Competent Authority. The amendments made by this instrument relate to registration onto Part 1 of the Register of Architects. The amendments largely consolidate the effect of the existing provisions, updating certain references in the Directive to the recognition of various qualifications recognised in other member states of the European Union.

7.2 The amendments are as follows:

Section 4 (registration in Part 1 of the Register: general)

4(2A)(c)(i)

Regulation 3(9)(a), (b), (c) or (e) of the 2007 Regulations (application) is referenced. This is amended to refer to regulation 3(8)(a), (b), (c) or (e) of the 2015 Regulations.

4(2A)(c)(ii)

Regulations 3(4) (application) and 20 to 26 of 2007 Regulations are referenced (qualifications, conditions for recognition, adaptation periods and aptitude tests). These are amended to instead refer to regulations 3(5) and 27 to 34 of the 2015 Regulations.

Section 4A (registration in Part 1 of the Register: European Qualifications)

4A(1)(c)

Paragraph 1 of Article 47 of the Directive is referenced (training provided by Fachhochschulen in Federal Republic of Germany). This is amended to refer instead to Article 49(3), reflecting the reordering and updating of the Directive.

4A(1)(d)

Paragraph 2 of Article 47 of the Directive is referenced (training as part of social betterment schemes or part-time university studies). This is amended to refer instead simply to Article 47 which now comprises one paragraph.

4A(1)(e)

Paragraph 1 of Article 49 is referenced (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). Reference to new paragraph 1a of Article 49 and to Annex V is added as the provisions have been rearranged and updated.

Section 6 (registration: further procedural requirements)

6(2A)

Regulation 25(1)(b) and (3)(b) (conditions for compensation measures) of the 2007 Regulations are referenced. These are amended to refer to regulation 32(1)(b) and (3)(a) of the 2015 Regulations.

***Consolidation***

7.3 DCLG has no current plans to consolidate the Act.

## 8. Consultation Outcome

8.1 Not applicable.

8.2 There has not been a consultation as these changes will have no impact on the architects' profession or the ARB. They are simply updates to references to ensure the Act is aligned with the revised version of the Directive and the 2015 Regulations.

## 9. Guidance

9.1 As these changes are minor and consequential amendments and will have no impact on the architects' profession or the policies or practices of the ARB there is no requirement for additional or revised guidance.

## 10. Impact

10.1 There is no impact, or minimal impact, on business, charities or voluntary bodies.

10.2 There is no impact, or minimal impact, on the public sector.

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

## 11. Regulating small business

11.1 These changes will have no impact on small businesses as they are already subject to the provisions of the Directive and the implementing regulations and these are largely consolidating amendments to update references in the Act.

## 12. Monitoring & Review

12.1 The Minister of State for Housing, Planning and London Gavin Barwell has made the following statement regarding review.

12.2 In my view it is not appropriate in the circumstances to make provision for review of the Architects Act 1997 (Amendment) Order 2016, as the instrument makes minor and consequential amendments to primary legislation in order to update references to other enactments.

## 13. Contact

13.1 Andrew Newton at DCLG can answer any queries regarding the instrument, Andrew.Newton@communities.gsi.gov.uk, 0303 444 1066.