EXPLANATORY MEMORANDUM TO

THE ARCHITECTS ACT 1997 (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument uses powers in the European Union (Withdrawal) Act 2018 to make necessary changes, which arise as a result of the United Kingdom's (UK's) withdrawal from the European Union (EU), to the Architects Act 1997 ("the 1997 Act").

Explanations

What did any relevant EU law do before exit day?

2.2 Parliament has long mandated the regulation of the architecture profession in the United Kingdom, dating back to the Architects (Registration) Act 1931. Some form of automatic recognition has been utilised by the ARB (or their precursor body) since the Directive 85/384/EEC, introduced in 1985. Prior to this, the title of architect was not protected in the UK and so no comprehensive system of recognition for international architects existed.

2.3 Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications ("the Directive") seeks to eliminate barriers to practising in other EU member states and EEA states by setting out the minimum standards required to be able to practise.

2.4 Architects are one of the seven sectoral professions that benefit from automatic recognition. If an EU or EEA citizen meets the minimum harmonised standards as set out in the Directive, they are eligible to register and practise in the UK as an architect. The Architects Registration Board ("ARB") is responsible for the registration of all architects in the UK and is the United Kingdom's Competent Authority under the Directive. The criteria for an EU or EEA national's application under automatic recognition are:

- An approved masters-level qualification, as set out in Annex V of the Directive
- Access to the profession of architect in their home state
- A statement from the applicant's home competent authority, confirming that the applicant is eligible and has not been subject to professional sanctions.

If the applicant does not meet the set criteria, they would need to utilise the General System, whereby each applicant is considered individually.

Why is it being changed?

2.5 When the UK leaves the EU the Directive will no longer apply to the UK, and as a result the existing process for recognising EU and EEA qualified applicants seeking to register as an architect in the UK will no longer be fully applicable, leaving the existing 1997 Act deficient.

2.6 This instrument is, therefore, needed to ensure the 1997 Act will operate effectively should the UK leave the EU without an agreed deal.

2.7 The Government has a duty to plan for all eventualities, including a 'no deal' scenario. To prepare for this eventuality, the Ministry of Housing, Communities and Local Government intends to use powers in the European Union (Withdrawal) Act 2018 to ensure that the UK continues to have a functioning regulatory regime. If the UK does not enter an implementation period, this instrument will come into force.

2.8 The Department for Business, Energy and Industrial Strategy is responsible for the Recognition of Professional Qualifications in the UK. They have laid a Statutory Instrument which covers the majority of other regulated professions. However, some sectoral professions, such as architects, requires their own legislation to be amended through separate Statutory Instruments. Other Government departments are also pursuing separate Statutory Instruments for sectoral professions that are within their remit.

What will it now do?

2.9 This instrument will freeze the list of qualifications that are recognised by the EU Directive immediately before exit day. As a result, an individual holding one of those qualifications is eligible to join the UK register of architects, provided that they have access to the profession of architect in their Home State. This approach will maintain continuity of registration in the event of no deal and preserve access to the workforce of EU and EEA qualified architects. The register of qualified architects in the UK, held by the ARB, currently includes 40,650 architects, 17% of whom were admitted under Directive procedures.

2.10 The applicant's ability to establish in the UK will be dependent on Government immigration policies.

2.11 This approach will apply to anyone who holds an approved qualification with access to the profession in a relevant EU or EEA member state. Applicants without an approved qualification would be required to apply for registration under the third country 'Prescribed Exam' route and undertake further examinations and periods of study.

2.12 This instrument removes the registration route of General Systems, which enables EU and EEA applicants who do not meet the automatic recognition criteria to work with the ARB to map what experience they do have against the UK criteria, and gain the experience necessary. As this is a costly and time-consuming process for both applicants and the regulator, with approximately 3-5 applicants pursuing this route annually, it was assessed as disproportionate and unnecessary in the future.

2.13 The Architects Registration Board's (ARB) role as the UK's regulator of the profession will continue. The SI will allow the ARB to cooperate with competent authorities to facilitate recognition decisions.

2.14 After EU exit, the ARB may lose access to the Internal Market Information (IMI) system. This facilitates communication between competent authorities. As a result, this instrument places the requirement to provide written verification from their home competent authority on the applicant should ARB be unable to secure it directly from the relevant competent authority. The instrument allows for the ARB to continue communicating with other EU and EEA competent authorities.

2.15 Subject to transitional provisions, EU and EEA citizens will no longer be able to work in the UK on the basis of temporary and occasional provision of services as of the date on which these Regulations come into force. This will have minimal impact on the architects' sector, as only 12 people are currently practising on this basis.

2.16 Applicants who would have previously been eligible for automatic recognition due to acquired rights will now also be required to pursue the third country qualification route. This includes rights for qualification in particular countries as set out in section 4A(1(b), (c), (f)) of the 1997Act, evidence of social betterment or part-time training section as set out in section 4A(1)(d) of the 1997Act and grandfathering provisions as set out in section 4A(1)(e) of the 1997Act.

2.17 Applications made before exit day will be determined under the pre-EU exit system of recognition, subject to necessary transitional provision to reflect that ARB would no longer be a competent authority for the purposes of the Directive in relation to the provision of evidence of qualification and administrative collaboration with competent authorities of other relevant European States.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the European Union (Withdrawal) Act 2018 or the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the UK.

4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

5.1 The Minister of State for Housing, Communities and Local Government, Kit Malthouse has made the following statement regarding Human Rights:

"In my view the provisions of the Architects Act 1997 (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018.

6.2 The European Union (Withdrawal) Act 2018 makes provision for repealing the European Communities Act 1972 and will preserve European Union law, as it stands at the moment of exit, in United Kingdom law. The European Union (Withdrawal) Act 2018 creates a new body of domestic legislation from directly applicable European Union law being brought into domestic legislation, as well as saving European Union derived domestic legislation which was made to implement the United Kingdom's obligations as a member of the European Union; together this will be retained European Union law.

6.3 The European Union (Withdrawal) Act 2018 contains a temporary power to make secondary legislation to deal with deficiencies in this retained EU law. This instrument makes a number of amendments to the 1997 Act in order to ensure that the legislation continues to function properly following the withdrawal of the UK from the EU. These amendments relate to matters which have been identified as deficiencies in the legislation arising from that withdrawal from the EU. See paragraph 2 above for further details.

7. Policy background

What is being done and why?

7.1 This instrument makes amendments to correct deficiencies in the 1997 Act regarding the registration of architects from the European Union. The purpose of the amendments is to ensure that the relevant legislation is still operable i.e. remains coherent and workable, following the exit from the European Union of the United Kingdom. Details of the amendments are set out in paragraph 2 above.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Memorandum.

9. Consolidation

9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 The Department did not consider that a public consultation was necessary because the instrument makes amendments to an existing regime to maintain the status quo as far as possible. Officials from the Ministry of Housing, Communities and Local Government have been in regular contact with ARB and other stakeholders who are content with the approach taken

11. Guidance

11.1 The key elements of this approach is set out in guidance which was published on 24th January 2019 at https://www.gov.uk/guidance/the-system-for-recognising-eu-qualified-architects-in-the-uk-if-there-is-no-brexit-deal?utm_source=f9599a6f-5204-4f17-942f-7ae031708b21&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate. This instrument makes provision to implement the approach outlined in the guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private or voluntary sector is foreseen due to the nature of the operability fixes contained within this instrument, as this instrument does not change the key requirements necessary to register as an architect in the UK. This conclusion has been verified by an internal panel of economists.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

13.2 Although small businesses (employing up to 50 people) may recruit directly from the EU or EEA member states, the instrument does not amend the current provision in the 1997 Act in which decisions regarding registration may take up to 3 months. An increased verification wait time would still be under the 3 month timeframe that the legislation allows for.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Irene Moisis at the Ministry of Housing, Communities and Local Government Telephone: 0303 44 48968 or email: irene.moisis@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Simon Gallagher, Director for Planning at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kit Malthouse MP, Minister of State for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 "In my view the Architects Act 1997 (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate". This is the case because the instrument makes only necessary changes required to ensure that the recognition of the professional qualifications of architects continues to operate consistently and coherently after the United Kingdom's withdrawal from the European Union.

2. Good reasons

2.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". These are:

a) ensuring that the legislation setting out how the recognition of the professional qualifications of architects works in the United Kingdom continues to function effectively after the United Kingdom withdraws from the European Union; and

b) ensuring that there is clarity for architects as to which legislation will apply once the United Kingdom withdraws from the European Union, and the requirements they are expected to meet.

3. Equalities

3.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP has made the following statement

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.