

Annex V: Consultation on the transposition of the revised Mutual Recognition of Professional Qualifications Directive (2005/36/EC) response form

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The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 06/11/2014

Please return completed forms to:

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We would like respondents to tick a box from a list of options that best describes them as a respondent. This allows views to be presented by group type.

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
<input checked="" type="checkbox"/>	Competent Authority
	Trade union or staff association
	Other (please describe)

General:

Question 1: Do you agree with our proposal to revoke and replace the current 2007 Regulations rather than amend them?

Comments:

For clarity we believe it would be best to revoke the current regulations and replace them.

European Professional Card (article 4a – 4d)

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As mentioned previously, the specifics of implementation are difficult to address at this stage as we are awaiting the adoption of an implementing act for the EPC. With this in mind, we have the following questions:

Question 2: Do you have any suggestions for professions that should be included in the EPC?

Comments:

The architect's profession represented by professional bodies and regulators at European level (Architects Council of Europe and European Network of Architectural Competent

Authorities) are of the position that the European Professional Card does not need to be introduced for the profession.

ARB shares this position and does not believe that the card is necessary for the profession as its added value for the consumer and for the migrant has not been established.

Question 3: Within the scope of article 4a.7 of the Directive relating to the power to adopt an implementing act, can you suggest any issues that we should be conscious of with regards to the EPC?

Comments:

We are assuming that all stakeholders (at national and European levels, including national competent authorities) will be consulted prior and during the process of drafting implementing acts.

Question 4: *Do Competent Authorities expect the EPC to deliver any cost savings from the transfer of responsibility for checking qualifications to home Member States? Please provide any detail possible on the expected cost implications of the EPC for your authority.*

Comments:

In the absence of a cost analysis for the Card (covering the production of the E-certificate, the maintenance of the IMI files by competent authorities and the costs for the applicant), the potential cost implications for ARB in processing Card applications are difficult to establish.

We are assuming however, that the costs of processing applications mainly refer to the production and validation of the Card as well as the creation and maintenance of an IMI file for each applicant. Should a professional apply for the Card or should the Card be made mandatory for a profession, the workload of competent authorities (in particular those which process the highest number of applications), will increase.

Competent authorities will have to invest in additional resources in order to process applications under the suggested timeframes and to maintain IMI files up to date (responsibilities of the Member State delivering the E-certificate). For example, Article 4e.5 indicates that the holder of the Card has the right to ask a competent authority to correct information on the IMI file and that they need to be informed of this right every two years. In this instance, the competent authority needs to have the adequate resources to be in a position to proactively contact an individual every two years if the individual is no longer a member of the profession.

The EPC system is not a replacement for the existing system for the recognition of qualifications but an alternative. Introducing the Card for architects in the UK would result in an additional bureaucratic burden for ARB as well as in additional costs.

Partial Access (Article 4f):

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Question 5: Bearing in mind the requirements for partial access set out in the Directive (article 4f.1), which professions do you consider eligible for partial access and why?

Comments:

We understand that the principle of partial access does not apply to professionals covered by the automatic recognition system (covered by Title III, Chapter III), but that other professionals may apply. Their application would then need to be considered on a case by case basis vis-à-vis partial access.

Given that in the UK only the title “architect” is protected (and given that there are no functions or activities reserved to architects), we are not clear as to how the partial access principle could apply and on that basis how we would then consider an applicant for partial access.

We are of the view that if activities are not exclusively reserved to architects, then partial access to the profession cannot apply, and that applications are to be processed via the General System route.

Question 6: Do you think that we should require applicants who wish to access a profession on a partial basis to do so using the title for that profession in English rather than the professional title of their own state? Is the answer different in relation to different professions?

Comments:

We believe that partial access is not applicable in the UK (because only the title “architect” is protected and there are no reserved functions for architects). However we are of the opinion that professionals benefiting from partial access should practice the profession they are qualified for using the title of their own state.

Translating a title into English could carry some confusion for the consumer. Any title which translates into English as “architect” would not be compatible with the Architects Act 1997.

Question 7: Are Competent Authorities able to provide any estimate of the cost of addressing an individual partial access case as well as any costs associated with changes (such as IT systems) to their registers to accommodate partial access?

Comments:

No comments (please see above).

Temporary service of provisions (articles 7, 8):

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Question 8: Do the new requirements for temporary provision require clarification?

Comments:

The requirement under Article 7(2)(d) to accompany the annual declaration by a proof that the service provider has practised the profession for at least one year (previously two years) if they are established in a Member State where the profession or education is not regulated, may improve choice for consumers and facilitate temporary mobility. This new provision does not require any clarification.

With regard to Article 7(2a), the new provision will not affect the way ARB recognises qualifications on a temporary basis. ARB regulates the profession at national level and ARB's Register of architects (Part 1 for those established in the UK including individuals who applied through the EU automatic recognition route and Part 2 for those providing their services on an occasional and temporary basis) is effective at national level.

The profession of architect is covered by the principle of automatic recognition of qualifications under Chapter III of Title III. Therefore, it is excluded from the scope of Article 7(4) and we have no comments in relation to this.

Article 8 allows competent authorities to exchange information regarding a service provider's application. The new additional provisions (reference to the exchange of information in case of justified doubts and check of the service provider's training course to assess substantial differences) reflect current practice.

Question 9: In relation to the option to require a language declaration in relation to professions with safety implication, which professions do you think fall within this description?

Comments:

Article 7(2(f)) refers to a requirement to provide a language declaration for professions that have patient safety implications. Our understanding is that the profession of architect does not belong to this category.

Question 10: Do any Competent Authorities anticipate additional costs incurred from the temporary service provision amendments?

Comments:

The reduction in the requirement to provide a declaration prior to cross-border movement could lead to an increase in applications to join the Register on a temporary basis. This could result for ARB in additional costs associated with the processing of applications.

Conditions for recognition (article 13):

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Question 11: Are the conditions for recognition sufficiently clear?

Comments:

The new conditions for recognition are clear and are unlikely to impact significantly on ARBs current processes. However, some administrative changes (e.g., amendments to assessment procedures) and additional training for those who undertake the assessment will be required and as a result additional costs for ARB will incur.

Compensation measures (article 14):

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Question 12: Although the applicant has the right to choose, Members States' can stipulate, by way of derogation, an adaptation period or aptitude test. Do you think there is a case, in relation to a profession, for expanding the category of cases where we may stipulate either an adaptation period or aptitude test as set out in Article 14.3? If so, please provide reasons for this.

Comments:

No comments in this area.

Question 13: Does applying a compensation measure raise the administrative costs of processing an application?

Comments:

No comments in this area.

Recognition of professional traineeship (article 55a)

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Question 14: What limits to the duration of professional traineeships should be set, if any, in relation to a relevant profession?

Comments:

There is a lack of clarity regarding the interpretation of Article 55a and how it sits alongside the requirements for the traineeship set out in Article 46 (under the 4+2 model).

We assume that the duration of the traineeship referred to under article 55a refers to the national requirements to access the profession of architect in the UK (rather than the professional traineeship referred to under Article 46.4).

In this context, ARB's requirements in terms of duration of professional traineeship (practical training experience) are set under Rule 13b of the Board's General Rules:

Application for Registration – Eligibility

The qualifications and practical experience prescribed by the Board pursuant to Section 4(1)(a) of the Act are that the person:

13.

- a. holds such qualification(s) as are listed in Schedule 2 to the Rules; and
- b. has recently completed a minimum of 24 months' practical experience under the direct supervision of a professional working in the construction industry which should include at least 12 months working in the EEA, Channel Islands or the Isle of Man, under the direct supervision of an architect.

These are published on ARB's website: <http://www.arb.org.uk/Practical-Training-Requirements-qualification>

Question 15: Are there any current guidelines on organisation and recognition of professional traineeships?

Comments:

Practical training requirements are set by ARB for the purpose of registration and use of the title "architect" in the UK.

More information on rules and requirements can be found on ARB's website:

<http://www.arb.org.uk/practical-training-requirements>

These are applicable to all individuals who are not applying for UK registration through the EU automatic recognition route.

Guidance on how to interpret ARB's practical training requirements are detailed below:

For the purpose of this Rule:

- "months"

these will be calendar months of full time working (at least 20 hours a week). Reasonable time off for holidays and illness may be included in this period. (Where the work is less than 20 hours per week, applicants will be expected to complete a commensurately longer period of experience.)

- "practical experience"

experience which consists of activities which would typically be undertaken by an architect in practice. (The Part 3 Criteria are helpful in setting out in broad terms, some of the activities which are likely to be required to be undertaken.)

- "recently"

at least 12 of the 24 months' experience should have been undertaken in the two years immediately before taking the Part 3 exam.

- "direct supervision"

the person supervising should have responsibility for and control over the work being undertaken.

- "professional working in the construction industry"

will be an architect registered in the territory where the experience is being undertaken or a chartered or similarly qualified member of an appropriate professional body. The

'construction industry' will include qualified professionals typically involved in the procurement, design and management of the built environment.

Guidance on the application of Rule 13(b)

Whilst Rule 13(b) states that candidates for registration should have undertaken a minimum of 12 months experience working in the EEA (including the UK), the Channel Islands or the Isle of Man under the supervision of an architect, candidates should note that the UK's Part 3 qualification tests UK practice and law. Practical experience is an integral element of the Part 3 qualification, and is important in assisting individuals to meet the Part 3 Criteria against which all Part 3 candidates are assessed.

It is therefore recommended that candidates undertake a minimum of 12 months' experience within the UK, as those whose experience lies solely outside the UK may find it difficult to meet the required level of knowledge and skill.

Candidates must be supervised during their practical experience. 'Direct supervision' is defined above but essentially, the supervisor should have control over and take responsibility for the work being undertaken. Typically the candidate and the supervisor will be employed by the same organisation but where the relationship is not typical they will need to satisfy their PSA (professional studies adviser employed by a University) that the level and type of supervision is appropriate.

While it is acceptable for any professional who is working within the construction industry (as defined above) to supervise up to 12 months of the experience, a registered architect is likely to be in the best position to assist a candidate in acquiring the required levels of skill and knowledge. Candidates who are not supervised by an architect may find it helpful to seek guidance and support from an architect working in another practice. The ARB Rule sets out the requirement for registration in the UK. Candidates may find that schools and Part 3 providers have more specific or additional requirements for entry to courses and for exam purposes. In the first instance they should discuss any queries with their professional studies adviser who will be able to advise them about the suitability of a placement and whether it is likely to satisfy ARB's and the school's own rules.

Automatic recognition on the basis of common training principles (articles 49a and 49b):

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These principles are subject to delegated acts adopted by the Commission. Therefore we are interested in your views in general terms only at this stage.

Question 16: Is the provision for setting up common training principles/frameworks of interest to your profession?

Comments:

The profession of architect is one of the professions covered by Chapter III Title III and therefore exempt from the application of Article 49a.

We noted that Article 49a(7) applies to specialities of a profession already covered by the automatic recognition system. In application of the Architect Act 1997, only the title "architect" is regulated and not the professional activities.

There are exemptions set out in the Act, and individuals can lawfully use the following titles without being prosecuted by ARB: "naval architect", "landscape architect" or "golf-course architect". All other titles including the word "architect", for example "conservation architect" are covered by the Architect Act 1997 and are therefore regulated.

Question 17: Do you consider your profession to be outside the scope of a CTF or CTT and why?

Comments:

Please refer to question 16.

Question 18: Do Competent Authorities expect common frameworks and tests to reduce administrative costs in processing PQD applications?

Comments:

No comments.

Access to information (articles 50.3, 57, 57a):

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Question 19: Are your procedures already available online?

Yes

No

Not sure

Comments:

These are available on the ARB website: <http://www.arb.org.uk/i-want-to-register>

Question 20: Do you accept electronic payments?

Yes

No

Not sure

Comments:

No additional comments.

Question 21: Is your Competent Authority already linked in to the PSC?

Yes

No

Not sure

Comments:

ARB is listed as the national contact point here:

<http://www.ecctis.co.uk/UK%20NCP/Individuals/Coming%20to%20the%20UK/Profession%20Details.aspx?ProfessionID=12>

Question 22: Are Competent Authorities able to provide any information about the expected costs and time taken to make available information through the Points of Single Contact?

Comments:

No comments.

Question 23: Do any Competent Authorities expect substantive costs to arise from providing electronic application processes? Could you please specify expected costs?

Comments:

In 2012, ARB introduced an online application (and electronic payment) system. Any update to the system as a result of the implementation of the revised Directive will incur additional costs, although these are likely to be modest.

Question 24: Do Competent Authorities who have switched to online application systems have any information on the impact this may have had on number of applications?

Comments:

The switch to a secured online registration application system (available to UK, EU and overseas qualified individuals) rendered the registration process more accessible and convenient for those who apply to join the Register.

Applicants have the facility to upload the required supporting documents and be able to make the relevant payment online once the application is complete. As a result of the introduction of the online system, timelines for the processing of applications have been reduced.

The overall number of applications to join the Register through the EU automatic recognition route has grown over the years. It is however difficult to assess whether applications have increased because of the switch to the online system.

Exchange of Information (article 56)

Page 21

Question 25: Are you aware of IMI?

Yes

No

Not sure

Comments:

ARB has direct access to IMI for the purpose of administrative cooperation (queries on individual applications and sending alerts to other competent authorities) and also for the purpose of notifying architectural qualifications in relation to Article 21a.

Question 26: Are you registered with IMI?

Yes

No

Not sure

Comments:

No additional comments.

If you are already registered on IMI:

i. do you find the system easy to use?

ii. do you find the information exchanged useful?

a. Yes

No

Not sure

b. Yes

No

Not sure

Comments:

For the purpose of administrative cooperation: the system is easy to use. There are however issues with regard to the accuracy of translations; it is not particularly user-friendly and generally slow. The system is only as good as those using it and occasionally there are delays in the provision of responses by other organisations.

For the purpose of notifying qualifications: the system is not yet fully operational and it is therefore too early to comment on its use.

Question 27: Do you consider you should be designated as a coordinator? Please provide reasons.

Comments:

ARB already has access to the IMI system as outlined above.

Question 28: Are affected Competent Authorities able to provide more information on how many additional staff may need to use IMI for the alert mechanism and the potential on-going costs of using the system?

Comments:

No comments.

Alert Mechanism (article 56a):

Page 22

As with the EPC, the specifics of implementation are difficult to address at this stage as we are awaiting the adoption of an implementing act for the Alert Mechanism. With this in mind, we have the following questions:

Question 29: Within the scope of the implementing act (article 56a.8), can you suggest any issues that we should be conscious of with regards to the Alert Mechanism including:

- Eligible authorities or coordinators
- Procedures on treatment of alerts
- Security of processing alerts?

Comments:

No comments.

Transparency initiative (article 59):

Page 23

Question 30: Do you have any views on the most effective exercise of the transparency process?

Comments:

ARB has participated fully in the transparency initiative which is currently looking at the regulation of architects. The process to date appears to have been consultative and Member States have been offered opportunities to provide information and views.

Do you know of any Chartered Bodies that should be either removed or added from Annex I? Please give reasons for your answer.

Comments:

No comments.

Question 31: Do you know of any regulated professions that should either be removed or added from Schedule I?
(<http://www.legislation.gov.uk/ukxi/2007/2781/schedule/1/made>) Please give reasons for your answer

Comments:

No comments.

Question 32: Has your Competent Authority updated the information on the database (A request to complete the 'Proportionality' tab was sent on 18 July 2014)?

Comments:

Yes, the information was supplied to BIS at the end of July 2014 and successfully added onto the EU database of regulated professions.

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

We believe there may be an error in the final version of the Directive relating to Article 47, which is currently worded as follows:

Article 47- Derogations from the conditions for the training of architects

By way of derogation from Article 46, the following shall also be recognised as complying with Article 21: training as part of social betterment schemes or part-time university studies which satisfies the requirements set out in Article 46(2), as attested by an examination in architecture passed by a professional who has been working for seven years or more in the field of architecture under the supervision of an architect or architectural bureau. The examination must be of university level and be equivalent to the final examination referred to in point (b) of Article 46(1).

Point (b) of Article 46(1) refers to (the 4+2 model):

b) not less than four years of full-time study at a university or a comparable teaching institution leading to successful completion of a university-level examination, accompanied by a certificate attesting to the completion of two years of professional traineeship in accordance with paragraph 4.

We believe however that the final reference, as highlighted, should read “...*be equivalent to the final examination referred to in article 46(1)*” so as to refer to the examination after completion of a 5 year qualification or a 4 year qualification.

Guidance on provisions specific to architects

As with the 2005 Directive, we would welcome the provision of some specific guidance regard the interpretation of the revised articles which refer to architects. We can provide further details in relation to the areas where additional guidance would be helpful as required.

Comments relating to the accompanying draft impact assessment

Page 31: It is shown that the application fee for architects is £140. Please note that this fee comprises an application fee and an annual retention fee. In 2014, the application fee was £35 and the annual retention fee was £105; for 2015, the application fee will remain the same but the annual retention fee will increase to £107. A pro rata is applied to the annual retention fee depending on when an individual joins the Register during the year.

Thank you for your views on this consultation.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes No

BIS/14/1001RF