

**Status:** This version of this contains provisions that are prospective.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Professional Qualifications and Services (Amendments and Miscellaneous Provisions) (EU Exit) Regulations 2020. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

PROSPECTIVE

### SCHEDULE 3

Amendments to the Architects Act 1997 (Amendment) (EU Exit) Regulations 2019

4. Part 3 is substituted with Parts 3 and 4, as follows—

#### “PART 3

Transitional and saving provision under the withdrawal agreement and the EEA EFTA separation agreement

##### **Part 2 of the Register**

**22.**—(1) This regulation applies where, before exit day, a visiting practitioner<sup>(1)</sup> is entitled under paragraph 3 of Schedule 1A to the 1997 Act, or continues to be entitled under paragraph 4 of that Schedule, to be registered in Part 2 of the Register, and, on IP completion day, has not lost entitlement to provide services.

(2) Any provision made by or under the 1997 Act relating to the provision of services on a temporary and occasional basis continues to apply in relation to the registration (including any appeal arising from it) without the amendments made by Part 2 of these Regulations, but subject to the modification specified in paragraph (3), on and after IP completion day in relation to the provision of services on a temporary and occasional basis by the visiting practitioner, until the earlier of the following—

- (a) the day on which an entitlement under paragraph 3 or 4(4) of Schedule 1A to the 1997 Act ceases under paragraph 5 of Schedule 1A to the 1997 Act; or
- (b) 30th January 2021.

(3) Any reference to a “relevant European State” in Schedule 1A to the 1997 Act has effect as if that reference includes the United Kingdom.

##### **Pending applications**

**23.**—(1) This regulation applies where—

- (a) before IP completion day, an applicant has made an application for registration under section 4(2A) of the 1997 Act to the Board; and
  - (b) the application has not been finally determined before IP completion day.
- (2) For the purposes of sub-paragraph (1), an application is finally determined when—
- (a) the Board has notified the applicant of its decision; and
  - (b) either—
    - (i) the period for appeal against that decision under section 22 of the 1997 Act has expired without an appeal being made; or
    - (ii) any such appeal has been determined or withdrawn.

(1) “Visiting practitioner” is defined in paragraph 2(1)(a) of Schedule 1A to the 1997 Act.

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(3) The provisions of the 1997 Act continue to apply in relation to the application referred to in paragraph (1) without the amendments made by Part 2 of these Regulations but subject to the modifications specified in regulation 24 in relation to—

- (a) the application concerned; and
- (b) an appeal made under section 22 of the 1997 Act against a decision made under that Act in relation to that application.

**24.—**(1) The modifications to the 1997 Act referred to in regulation 23(3) are as set out in the following paragraphs.

(2) Section 5E(2) (complaints by recipients of services) of the 1997 Act has effect as if after “correctly pursued” there were inserted “in accordance with data protection legislation within the meaning of section 3(9) of the Data Protection Act 2018(2)”.

(3) Section 22C (confidentiality) of the 1997 Act has effect as if—

- (a) in subsection (2)—
  - (i) paragraph (b) (but not the final “and”) were omitted;
  - (ii) in paragraph (c)(ii), for “by a Directive-rights national” there were substituted “in reliance on section 4(2A)”;
- (b) in subsection (4), for the words from “which,” to the end there were substituted “which in the course of the carrying out of the authority’s functions under section 4 or 4A is disclosed by or on behalf of the authority to a competent authority of a relevant European State.”.

(4) Section 25 (interpretation) of the 1997 Act has effect as if the definition of “relevant European State” includes the United Kingdom.

#### **Administrative cooperation under the withdrawal agreement and the EEA EFTA separation agreement**

**25.—**(1) The modifications to the 1997 Act in regulations 26 and 27 apply where an individual has, before IP completion day, made an application falling under Article 28 of the withdrawal agreement or Article 27 of the EEA EFTA separation agreement(3) to a competent authority in a European State for recognition of a professional qualification awarded or recognised by the Board.

(2) In this regulation—

“competent authority” has the meaning given by regulation 2(1) of the 2015 Regulations; and

“European State” means an EEA State other than the United Kingdom.

**26.** Section 5D(1) (administrative co-operation with other relevant European States) of the 1997 Act has effect as if after “that person’s establishment” there were inserted “as an architect”.

**27.** Section 22B (administrative co-operation) of the 1997 Act has effect as if—

- (a) for subsections (1) and (2) there were substituted—

“(1) The Board must, for the purposes of facilitating the recognition of the qualifications of architects—

(2) 2019 c. 12. Section 3(9) was amended by S.I. 2019/419.

(3) See section 39(1) of the European Union (Withdrawal Agreement) Act 2020 (c. 1) for the definition of “EEA EFTA separation agreement”.

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(a) collaborate with competent authorities of relevant European States, and

(b) provide assistance to competent authorities of relevant European States in order to facilitate the accreditation in a relevant European State of registered persons or persons holding qualifications or experience prescribed under section 4(1)(a).

(2) The Board must exchange professional-regulation information about persons who have made an application for registration under section 4(2A) with competent authorities of relevant European States in accordance with data protection legislation within the meaning of section 3(9) of the Data Protection Act 2018 and through use of the IMI procedure where appropriate, in accordance with Article 29(2) of the withdrawal agreement.”;

(b) in subsection (4) in the words before paragraph (a)—

(i) for “another” there were substituted “a”;

(ii) after “European State” there were inserted “or a person who applies for registration”.

### Interpretation of saved provisions

**28.** Where a provision of the 1997 Act continues to apply by virtue of this Part, that provision has effect with the modifications in regulations 29 to 32.

**29.** Section 25 (interpretation) has effect as if—

(a) for the definition of “the Directive” there were substituted—

““the Directive” means Council [Directive 2005/36/EC](#) on the recognition of professional qualifications as it had effect immediately before IP completion day and 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 and by the Swiss Agreement as those Agreements had effect immediately before IP completion day;”;

(b) in the definition of “disqualifying decision”, in paragraph (a), the words “other than the United Kingdom” were omitted;

(c) there were inserted at the appropriate places—

““enforceable EU right” means a right recognised and available in domestic law, immediately before IP completion day, by virtue of section 2(1) of the European Communities Act 1972;

“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;”.

**30.** Paragraph 7(2)(b) of Schedule 1A (visiting architects from relevant European States: Registrar’s power to remove person’s name from Part 2 of the Register) has effect as if the words “that is not the United Kingdom” were omitted.

**31.** Any reference to a relevant European State other than the United Kingdom has effect as if the words “other than the United Kingdom” were omitted.

**32.** Any reference to the 2015 Regulations has effect—

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- (a) in relation to anything done before IP completion day, as if it were a reference to those Regulations as they had effect immediately before IP completion day;
- (b) otherwise, as if it were a reference to those Regulations as (and only to the extent that) they have effect, on or after IP completion day, in relation to an entitlement which arose before IP completion day or arises as a result of something done before IP completion day.

## PART 4

### Swiss citizens' rights agreement

#### Temporary and occasional provision of services - additional rights under the Swiss citizens' rights agreement

##### 33. In this Part—

- (a) a “relevant applicant” means an individual—
  - (i) who provides services as an architect in the United Kingdom on a temporary and occasional basis on the basis of a written contract which was concluded, and the performance of which started, before IP completion day;
  - (ii) who began providing the services described in sub-paragraph (i) either—
    - (aa) before IP completion day, in an employed or self-employed capacity; or
    - (bb) on or after IP completion day, as an employee posted for the purpose of carrying on professional activities in the United Kingdom by their employer who is established in the United Kingdom or Switzerland;
  - (iii) who is a national of the United Kingdom or Switzerland, or a third country national who was, immediately before IP completion day, by virtue of any enforceable EU right entitled to be treated no less favourably than a national of either State for the purposes of access to and pursuit of the profession of architect; and
  - (iv) who is legally established in Switzerland for the purpose of pursuing the same profession there; and
- (b) “third country” and “same profession” have the meanings in regulation 2(1) of the European Communities (Recognition of Professional Qualifications) Regulations 2007<sup>(4)</sup> as they had effect immediately before IP completion day.

#### Qualifications begun before IP completion day – extended period for recognition under Swiss citizens' rights agreement

34.—(1) For the purposes of this Part, a “qualifying applicant” means an individual who—

- (a) is a national of the United Kingdom or Switzerland, or a third country national who was, immediately before IP completion day, by virtue of any enforceable EU right entitled to be treated no less favourably than a national of either State, for the purposes of access to and pursuit of a regulated profession;

<sup>(4)</sup> S.I. 2007/2781, revoked by S.I. 2015/2059 and 2019/312 subject to savings.

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- (b) wishes to access and pursue the profession of architect in the United Kingdom on a permanent basis, whether in an employed or self-employed capacity;
  - (c) has obtained a relevant qualification;
  - (d) if that relevant qualification was obtained in a third country, has three years' professional experience in the profession concerned in the territory of Switzerland and certified by a competent authority in Switzerland; and
  - (e) if that relevant qualification is a professional qualification obtained in an EEA State, is legally established in Switzerland, unless the individual is a Swiss national.
- (2) In paragraph (1), “relevant qualification” means —
- (a) a professional qualification obtained in an EEA State or Switzerland before IP completion day;
  - (b) a professional qualification started in an EEA State or Switzerland before IP completion day but completed after IP completion day;
  - (c) a third country professional qualification recognised by a competent authority in Switzerland pursuant to Article 2(2) of [Directive 2005/36/EC](#) before IP completion day;
  - (d) a third country professional qualification for which an application for recognition pursuant to Article 2(2) of [Directive 2005/36/EC](#) has been submitted to a competent authority in Switzerland before IP completion day, where that application is successful after IP completion day.
- (3) In paragraph (2)—
- “[Directive 2005/36/EC](#)” means [Directive 2005/36/EC](#) of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications as it had effect immediately before IP completion day;
- “professional qualification” means qualification for the purposes of sections 4 (registration in Part 1 of the Register: general) or 4A (registration in Part 1 of the Register: European qualifications) of the 1997 Act.

### Further provisions relating to the Swiss citizens' rights agreement

**35.—**(1) In dealing with a relevant applicant who provides services in the United Kingdom, the Board must treat the person no less favourably than it would treat a national of the United Kingdom making an application, providing services as an architect, or pursuing that same profession in the United Kingdom.

(2) Where an individual is providing services on a temporary and occasional basis in Switzerland pursuant to Article 23 of the Swiss citizens' rights agreement<sup>(5)</sup>, the Board must cooperate with the appropriate competent authority in Switzerland in accordance with section 5D of the 1997 Act (administrative co-operation with other relevant European States) as modified by regulation 40.

(3) Where an individual has made or makes an application falling within Article 31(1) or Article 32(1) or (5) of the Swiss citizens' rights agreement to a competent authority in Switzerland for recognition of a professional qualification awarded or recognised by a competent authority in the United Kingdom, the Board must cooperate with and provide information to the competent authority or contact point in Switzerland, or the individual

<sup>(5)</sup> See section 39(1) of the European Union (Withdrawal Agreement) Act 2020 for the definition of “Swiss citizens' rights agreement”.

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(as the case may be), in accordance with section 22B of the 1997 Act (administrative co-operation).

(4) Competent authorities must exchange information for the purposes of subparagraphs (2) and (3) in accordance with data protection legislation within the meaning of section 3(9) of the Data Protection Act 2018.

### **Attestations of competence**

**36.**—(1) The Board must permit access to or pursuit of the profession of architect to a qualifying applicant under the same conditions as apply to a UK applicant, where the qualifying applicant—

- (a) possesses the attestation of competence or evidence of formal qualifications required by Switzerland, in order to gain access to and pursue that same profession in Switzerland, or
- (b) has pursued that same profession on a full time basis for one year or for an equivalent overall duration on a part-time basis during the previous ten years in a relevant European State which does not regulate that profession, provided that the applicant possesses one or more attestations of competence or documents providing evidence of formal qualifications issued by that other State which does not regulate that profession.

(2) Attestations of competence or evidence of formal qualifications must satisfy the following conditions—

- (a) they must have been issued by a competent authority of a relevant European State;
- (b) where paragraph (1)(b) applies, they must also attest that the applicant has been prepared for the pursuit of the profession in question.

(3) The Board must not require the one year of professional experience referred to in paragraph (1)(b) if the evidence of formal qualifications which the applicant possesses certifies regulated education and training.

(4) For an attestation issued under regulation 27 of the 2015 Regulations for a qualifying applicant—

- (a) the Board must accept the level attested under regulation 27 by a competent authority in Switzerland as well as the certificate by which a competent authority in Switzerland certifies that regulated education and training or vocational training with a special structure referred to in regulation 27(c)(ii) is equivalent to the level provided for in regulation 27(c)(i); and
- (b) the Board may refuse access to and pursuit of the profession of architect where access to that profession is contingent in the United Kingdom on possession of a qualification set out in regulation 27(e) of the 2015 Regulations and where the applicant possesses an attestation of competence classified under regulation 27(a) of those Regulations.

### **Transitional provision**

**37.**—(1) This regulation and regulations 38 to 47 apply to —

- (a) a relevant applicant for the purposes of regulation 33;
- (b) a qualifying applicant for the purposes of regulation 34.

(2) Subject to paragraph (3)—

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- (a) the provisions of the 1997 Act continue to apply on and after IP completion day in relation to a relevant applicant as they had effect immediately before IP completion day, but subject to the modifications specified in regulations 39 to 47, until—
    - (i) the end of the period of five years beginning with IP completion day; or
    - (ii) where the period referred to in paragraph (i) is extended in accordance with Article 23(2) of the Swiss citizens' rights agreement, the end of that period as extended;
  - (b) the provisions of the 1997 Act continue to apply to a qualifying applicant on and after IP completion day as they had effect immediately before IP completion day without the amendments made by Part 2 of these Regulations, but subject to the modifications specified in regulations 39 to 47, in relation to—
    - (i) the application concerned; and
    - (ii) any appeal made under section 22 of the 1997 Act against a decision under that Act in relation to that application.
- (3) The provisions of the 1997 Act mentioned in regulations 39 to 47 cease to have effect in relation to a qualifying applicant at the end of the period of four years beginning with IP completion day unless—
- (a) the qualifying applicant is registered under section 4(2A) of the 1997 Act immediately before the end of that period;
  - (b) the qualifying applicant had applied before the end of that period for registration under section 4(2A) of the 1997 Act and—
    - (i) that application had not been decided before the end of that period;
    - (ii) the application had been refused by the Registrar and an appeal against that decision had not been finally determined or withdrawn before the end of that period; or
    - (iii) the application had been refused by the Registrar but an appeal against that decision was not made within that period;
  - (c) the qualifying applicant's registration as a registered architect was suspended before the end of the period of four years beginning with IP completion day and that suspension does not end within that period; or
  - (d) the qualifying applicant's name was not re-entered or the qualifying applicant's name was removed from the Register by the Board before the end of the period of four years beginning with IP completion day and—
    - (i) an appeal against that decision of the Board had not been finally determined or withdrawn before the end of that period; or
    - (ii) an appeal against that decision of the Board was not made within that period.
- 38.** Where a provision of the 1997 Act continues to apply by virtue of regulation 37, that provision has effect with the modifications in regulations 39 to 47.
- 39.** Section 4A (registration in Part 1 of the Register: European qualifications) of the 1997 Act has effect as if—
- (a) in subsection (1)(e) "other" were omitted;
  - (b) in subsection (2)(b) "other" were omitted; and
  - (c) in subsection (2)(c) for "another" there were substituted "a".

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**40.** Section 5D(1) (administrative co-operation with other relevant European States) of the 1997 Act has effect as if after “that person’s establishment” there were inserted “as an architect”.

**41.** Section 5E (complaints by recipients of services) of the 1997 Act has effect as if—

- (a) in subsection (1), for the words from “, in any relevant European State” to the end there were substituted “in the United Kingdom, apart from when the person is lawfully established as an architect in the United Kingdom.”;
- (b) in subsection (2) after “correctly pursued” there were inserted “in accordance with data protection legislation within the meaning of section 3(9) of the Data Protection Act 2018”.

**42.** Section 22B (administrative co-operation) of the 1997 Act has effect as if—

(a) for subsections (1) and (2) there were substituted—

“(1) The Board must, for the purposes of facilitating the recognition of the qualifications of architects—

- (a) collaborate with the competent authorities of Switzerland, and
- (b) provide assistance to the competent authorities of Switzerland in order to facilitate the accreditation in a relevant European State of registered persons or persons holding qualifications or experience prescribed under section 4(1)(a).

(2) The Board may exchange professional-regulation information with competent authorities of relevant European States in accordance with data protection legislation within the meaning of section 3(9) of the Data Protection Act 2018 about—

- (a) persons who have made an application for registration under section 4(2A);
  - (b) registered persons who are practising or are seeking to practise as architects in Switzerland.”;
- (b) in subsection (4) in the words before paragraph (a)—
- (i) for “another” there were substituted “a”;
  - (ii) after “European State” there were inserted “or a person who applies for registration”.

**43.** Section 22C (confidentiality) of the 1997 Act has effect as if—

(a) in subsection (2)—

(i) paragraph (b) (but not the final “and”) were omitted;

(ii) in paragraph (c)—

- (aa) in sub-paragraph (i), for “another” there were substituted “a”;
- (bb) in sub-paragraph (ii), for “by a Directive-rights national” there were substituted “in reliance on section 4(2A)”;

(b) in subsection (4), for the words from “which,” to the end there were substituted “which in the course of the carrying out of the authority’s functions under section 4 or 4A is disclosed by or on behalf of the authority to a competent authority in Switzerland.”.

**44.** Section 25 (interpretation) of the 1997 Act has effect as if there were inserted at the appropriate place—



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““enforceable EU right” means a right recognised and available in domestic law, immediately before IP completion day, by virtue of section 2(1) of the European Communities Act 1972;”.

**45.** Paragraph 7(2)(b) of Schedule 1A (visiting architects from relevant European States: Registrar’s power to remove person’s name from Part 2 of the Register) to the 1997 Act has effect as if the words “that is not the United Kingdom” were omitted.

**46.** Any reference to a relevant European State other than the United Kingdom in the 1997 Act has effect as if the words “other than the United Kingdom” were omitted.

**47.** Any reference to the 2015 Regulations in the 1997 Act has effect—

- (a) in relation to anything done before IP completion day, as if it were a reference to those Regulations as they had effect immediately before IP completion day;
- (b) otherwise, as if it were a reference to those Regulations as (and only to the extent that) they have effect, on or after IP completion day, in relation to an entitlement which arose before IP completion day or arises as a result of something done before IP completion day.”.

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#### **Commencement Information**

- II** Sch. 3 para. 4 in force at 31.12.2020 immediately before IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see [reg. 1\(3\)](#)

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**Changes and effects yet to be applied to :**

- Sch. 3 para. 4 coming into force by [S.I. 2020/1038 reg. 1\(3\)](#)