



## Information For Prospective Technical Assessment Applicants

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## Introduction

Welcome to the latest RIAI bulletin for prospective Technical Assessment applicants. This paper addresses current queries, developments and legal opinions received.

Since the briefing sessions began last December, updates have been posted on the RIAI website to ensure broad accessibility. You can find them here:

[http://www.riai.ie/uploads/files/QA\\_at\\_Briefing\\_Sessions\\_and\\_subsequent\\_email\\_queries\\_v1\\_%2014jan2009.pdf](http://www.riai.ie/uploads/files/QA_at_Briefing_Sessions_and_subsequent_email_queries_v1_%2014jan2009.pdf)

If this bulletin raises any questions or issues for you, please do not hesitate to get in touch via phone or email. Email queries should be sent to [moflanagan@riai.ie](mailto:moflanagan@riai.ie), telephone queries can be made to (01) 6761703.

A further Bulletin will be issued in the coming weeks to confirm the Technical Assessment fee and will include general queries raised and the responses provided.

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## Information supports

The RIAI's Admissions Office is available to answer questions directly from those preparing, or considering making, a Technical Assessment application. Quite a number of those considering Technical Assessment or currently preparing applications already avail of this service but it has come to our attention that many may not actually be aware that advice is available directly.

The types of queries we are receiving on which we can advise include:

- Which application routes are open to you and what your options are
- How best to structure your information
- Procedures and what to expect
- Difficulties with securing verifications
- Legal interpretation of the criteria



If you have a query, whether it is covered by this list or not, please do not hesitate to get in touch by email or telephone. Queries should be sent in the first instance to Margaret Hynds O'Flanagan, Admissions Director [moflanagan@riai.ie](mailto:moflanagan@riai.ie) / (01) 6761703. The Technical Assessment process and all associated decision making are matters for the Technical Assessment Board. For this reason advice given cannot extend to the content of an application (e.g. which projects to pick etc.) but does extend to technical matters such as the format and structure of an application and the assessment process itself.

The RIAI is considering providing applicant support in the form of preparatory workshops. The focus of these workshops would be to:

- Familiarise participants with the application structure,
- Identify how best to organise information
- Provide a forum for discussion for prospective candidates

These workshops will only be developed and delivered if there is enough interest to make them worthwhile. If you would like to attend a preparatory workshop please email Antje Baeger [abaeger@riai.ie](mailto:abaeger@riai.ie) indicating your interest in attending, and any suggestions you have for specific issues you would like to see covered.

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## **Notice: Architects Register Admission Examination information meeting Saturday 13 November**

Section 14(2)(f) of the Building Control Act 2007 makes provision for a 'register admission examination'. ARAE Ltd. provides such a register admission examination and is in the latter stages of the accreditation process. The examination currently has Provisional Approval. No examination can be fully evaluated until after the first cohort of candidates has completed the examination. The first ARAE cohort will complete in early 2011. Technical Assessment candidates (who require ten years of practice at the level of an architect before 1 May 2008, whereas the register admission examination requires seven years without the cut-off), should all be eligible to sit this examination if they so wish. This information is provided so as to keep potential applicants fully informed of their options.



### **“ARAE- Architects Register Admission Examination**

The Architects Register Admission Examination, established in 2009, provides a route to the Register of Architects for people in architectural practice who have not attained the required academic and professional qualifications.

In three stages of assessments, over one calendar year, ARAE offers you an opportunity to demonstrate your competence and experience.

This series of assessments is designed to be relevant to people who have gained knowledge and skill through experience and self-advancement, rather than formal and professional education.

### **Information Meeting**

An Information Meeting for the 2011 Examination will be held in the School of Architecture, Landscape & Civil Engineering, UCD Richview, Clonskeagh, Dublin 14 on **Saturday 13 November 2010**. A short presentation will be given at 12.00pm and staff will be available to answer questions until 2.30pm.

All are welcome to attend.

### **Applications**

Application Forms for the 2011 Examination will be available from the ARAE website from **Monday 15 November** and applications will be accepted until Monday 29 November 2010. If all 40 places have not been filled by this date, late applications will be accepted.

The 2011 Prospectus is now available at [www.arae.ie](http://www.arae.ie) Enquiries [info@arae.ie](mailto:info@arae.ie)”

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## **Legal Advice to Technical Assessment Board on the application of assessment criteria (Section 22(7) of the Act)**

The Technical Assessment Board requested the RIAI to seek legal advice on the application of the criteria for assessment set out in Section 22(7) of the Building Control Act 2007. The query issued by the RIAI involved two key issues:

1. whether each of the four criteria set out in Section 22(7) must be treated as ‘absolutes’ (and therefore must be demonstrated in full), or whether there is room for the Board to apply judgement and find a ‘balance’ between the criteria, and



2. whether or not all of the competencies set out in Article 46 of the Professional Qualifications Directive must be considered by the Board to have been demonstrated in full.

The relevant advice is reproduced here to assist candidates in preparing submissions.

The criteria used in Technical Assessment are as follows:

“22 (7) The Technical Assessment Board shall use the following criteria in assessing an application under this section:

- (a) whether or not for the period referred to in *subsection (1)*, the applicant had been performing duties commensurate with those of an architect;
- (b) whether or not the work submitted was equivalent to the work of an architect, having regard to its scale, complexity and quality;
- (c) whether or not the applicant can demonstrate that he or she has acquired the competencies specified in Article 46 of the Directive;
- (d) whether or not the work submitted had been realised by the applicant, and, if the applicant was not totally responsible, what level of responsibility by the applicant for the work could be established,

and, in addition, shall have regard to the opinion of the architects referred to in *section 21(5)* as to whether the applicant is eligible for registration pursuant to this section (but that opinion shall not be binding on the Board).”

The RIAI sought and received an Opinion from Gerard Hogan S.C.. The relevant sections of the advice are reproduced below:

### **Regarding Article 46 of the Professional Qualifications Directive (2005/36/EC) which is addressed in Section 22(7)(c)**

“Article 46(1) of the Directive is essentially descriptive of the nature of an architect’s training and the range of the skills and knowledge which architects are expected to acquire by virtue of that training. Section 22 of the 2007 Act deals with a slightly different matter, namely, whether persons, who are not otherwise eligible for registration as architects, should nonetheless be entered on the register by virtue of the fact that for ten years prior to the commencement they performed “duties commensurate with those of an architect” and whether their work “was equivalent to the work of an architect, having regard to its scale, complexity and quality”. In effect, therefore, the Board is required to evaluate the applicant’s work to see whether it is of sufficient quality and standard such that it might be compared with that of an architect, bearing that the object here is to protect the public interest.”

“It is against this background that the requirement in section 22(7)(c) - namely, whether or not the applicant can demonstrate that he or she has acquired the competencies specified in Article 46 of the Directive - must be



evaluated. Fundamentally, the Board is required to make an overall, balanced judgment as to merits of the candidate's application, albeit - as we shall presently see - some of these specific requirements (e.g., the 10 years' experience requirement) are also absolutes. Quite obviously, the Board is required to assess whether the applicant has acquired these competencies, but in the context of an overall judgment as to the candidate's suitability for registration."

"This, however, *does not mean* that the applicant *must* satisfy each and every one of the enumerated competencies in Article 46. Rather the question is one which is committed to the judgment of the Board as part of an overall assessment of the suitability and competence of the applicant. Thus, it may be that the Board would be satisfied to register a particular applicant, even though, for example, he or she could not satisfy the Board in respect of a particular sub-competence. In my judgment, if section 22(7)(c) required the Board to be satisfied in respect of each particular sub-competence, it would have said so in express terms."

#### **Regarding Sections 22(7)(a) and 22(7)(d)**

"It is true, of course, that each of the criteria are different and from a practical perspective it may be difficult to see how they could be balanced against one another when making a judgment as the majority are in varying degrees, absolutes. For example, section 22(7)(a) requires that the applicant demonstrate ten years at a specific level (duties commensurate with those of an architect). While there may be room for the application of judgment with regard to the level of work that could be considered commensurate with that of an architect, once the level is established, then the ten years requirement is an absolute. In other words, the Board cannot dispense with the 10 year requirement or "balance" a short-coming in this regard with other matters."

"The same could generally be said of section 22(7)(d), since the work either has to have been done by the applicants or the level of their involvement must be clearly established. The applicants can establish that they either did the work, or they did not"

#### **Regarding Sections 22(7)(b) and 22(7)(c)**

"It might be possible to say that section 22(7)(b) and section 22(7)(c) are more subjective and therefore could be balanced against one another to some degree. In the end, each criterion requires expert judgment. Assessors are appointed review the submissions, interview the candidate and form an opinion to be provided by the Board. Whether or not work is at the level of an architect, or indeed whether or not an individual has demonstrated the competencies or learning outcomes that describe the 'minimum training conditions' described in Article 46 would not be considered wholly subjective by an expert in the field, an architect, of which there are three engaged to carry out each assessment and provide an opinion on same"

#### **Conclusion**

"To recapitulate again, the matter is ultimately committed to the judgment of the Board. Some of the statutory requirements are expressed to be absolutes and the Board cannot dispense with such



requirements or “balance” them against other criteria. In other cases, there is (or, at least, there may be) more room for judgment. But save where the requirement in question is expressed to be absolute by the section and with which the applicant is required to comply, in my opinion the Board otherwise remains free to make a judgment by reference to the stated criteria.”

“ In summary, therefore, I am of the view that:

- A. Section 22 requires the Board to make a judgment in the public interest as to whether the applicant’s work is commensurate to that of an architect.
- B. In some cases, the statute stipulates mandatory requirements with which each applicant must comply. In other instances, the Board has more room for individual judgment.
- C. Subject to compliance with the mandatory requirements, the Board is required thus to evaluate the applicant by reference to the stated criteria and make an overall, balanced judgment on the applicant. The Board must have regard to the Article 46 criteria, but there is no requirement that the applicant must satisfy *each* of the sub-criteria if the Board were to be *otherwise* satisfied that the applicant was suitable for registration and that the requirement in question was not a mandatory requirement.”

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## Market Access in the EU

Concerns have been raised in recent weeks as to the RIAI affix registrants will receive if they seek membership of the RIAI on the basis of registration as provided for in Section 14(4) of the Act.

The Professional Qualifications Directive (2005/36/EC) provides a number of mechanisms for professionals to be recognised in Member States other than their ‘Home’ State for the purpose of doing business. The three primary mechanisms are:

1. Temporary and Occasional recognition: In this case a professional ‘established’ in one State (the Home State) may apply for recognition to provide services in another State (the Host State). With this form of recognition the Host State must rely only on the recognition in the Home State and does not have leave to refuse an application on the basis of qualifications. Registration as an architect in Ireland constitutes ‘establishment’.
2. The General System: This system is used for the purpose of ‘establishment (e.g. setting up a business in a Member State) and is open to eligible practitioners of all 800 professions covered by the Directive. In this mode of recognition the qualifications held by the professional, in conjunction with an attestation of competence from the Home State, are assessed by the prospective Host State. If the Host State finds that the qualifications are inadequate “compensation measures”, taking the



form of an adaptation period or an aptitude test, may be applied.

3. Automatic recognition: Within the 800 professions covered by the Directive there is a subset of 'Sectoral' professions where standards are either 'harmonised' or have 'minimum training conditions' set. Architects are one of this group, along with doctors with basic training, specialised doctors, nurses responsible for general care, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives, and pharmacists. Because specific EU-wide standards have been set, and some derogations agreed, at European Commission level, these professions benefit from procedures for 'automatic recognition'.

To give their holders a right to 'automatic recognition' qualifications must be submitted to the Commission for review before they are included in the Commission's published list of qualifications (Annex V and Annex VI of the Directive). The review process, which involves State authorities as well as the Commission's Group of National Co-ordinators and a sub-group of experts, is lengthy and intensive, requiring input from every Member State. The ongoing compliance of listed qualifications with the commitments set out at the initial review stage is accepted on the basis of 'Mutual Trust'. Where a Member State believes that this trust has been broken, the issue may be raised at the group of National Co-ordinators.

MRIAI is listed as a qualification in Annex V.7.1 of Directive 2005/36/EC and therefore confers the right of "automatic recognition" in other EU Member States. The Building Control Act 2007 confers eligibility for RIAI membership on all registrants, but does not govern the membership affix. Only those who meet the requirements for automatic recognition, or can benefit from derogations provided in Article 47 of the Directive can be awarded the MRIAI qualification. So an alternative affix is required for those who are registered and eligible for RIAI membership, but who do not meet the requirements for automatic recognition. For this reason, the RIAI Council introduced the MRIAI(IRL) affix in October 2009.

The Building Control Act 2007 transposes Directive 2005/36/EC (on the recognition of professional qualifications) into Irish law. It also addresses access to the professional title 'architect' on a National level. However, not all modes of entry to the Irish Register for architects set out in the Act (i.e. national recognition), meet the requirements for 'automatic recognition' throughout the EU and EEA. This does not preclude recognition of eligible individuals by other States for the provision of services on a temporary or occasional basis, nor does it preclude applications from those otherwise eligible under the 'General System' for recognition.

The primary groupings who can be registered as architects in Ireland but who are not immediately entitled to 'automatic recognition' within the EU include: (please note that references to Temporary recognition and General System recognition relate to Nationals of other EU Member States applying for recognition in Ireland, not Irish registrants seeking recognition in other Member States\*)



Access to Irish Register	Directive Compliance issue	Application of MRIAI/MRIAI(IRE)
The General System *i.e. Nationals of other EU member States seeking registration in Ireland	General System applicants may be recognised and registered in Ireland (as a 'Host' State). This, however, would not make them eligible for automatic recognition in other States, not being compliant with Article 46 or benefiting from the derogations in Article 47(2)	These registrants cannot be awarded the MRIAI which confers automatic recognition rights, but may be awarded the MRIAI(IRE). Registration also confers eligibility to seek consideration in other Member States for recognition on a temporary and occasional basis (Article 5).
Third country applicants recognised on the basis of non-EU qualifications who have yet to have three years of certified practice in Ireland	Under Article 3.3. of the Directive, where an individual is recognised on the basis of non-EU qualifications they must have three years of certified practice in Ireland before other States must consider that recognition. Citizenship is a separate issue for individual authorities.	These registrants cannot at the outset be awarded the MRIAI which confers automatic recognition rights, but may be awarded the MRIAI(IRE). Having applied for and successfully achieved certification of three years practice in Ireland, they may then be awarded MRIAI and avail of automatic rights, pending compliance with EU citizenship requirements.
Temporary registration *i.e. Nationals of other EU member States seeking registration in Ireland for the provision of services on a temporary and occasional basis	Applicants to the Irish register under this route cannot be refused on the basis of qualifications held, but applicants must already be established in another Member State to avail of this mode of registration.	These registrants cannot be awarded the MRIAI which confers permanent automatic recognition rights, but may be awarded the MRIAI (IRE).
Technical Assessment	Under the Article 47(2) derogation applicants can benefit from recognition on the basis of "training as part of social betterment schemes or part-time university studies which satisfies the requirements referred to in Article 46, as attested by an examination in architecture passed by a person who has been working for seven years or more in the field of architecture under the supervision of an architect or architectural bureau." Those without the seven years 'supervision' do not meet the requirements to benefit from the derogation and so are not eligible for 'automatic recognition'.	Those who meet all three criteria: Social Betterment Scheme (Technical Assessment); Article 46 compliant examination (Technical Assessment); and seven years supervised practice can be awarded the MRIAI qualification which confers automatic recognition rights being listed as a qualification in Annex V.7.1 of the Directive. Those who do not meet all three Article 47(2) criteria (i.e. the seven years supervised practice) cannot be awarded the MRIAI which confers automatic recognition rights, but may be awarded the MRIAI(IRE) and on that basis may consider applying to other Member States under the General System (Articles 10 -15) should they meet the requirements. Registration also confers eligibility to seek consideration for recognition on a temporary and occasional basis (Article 5) in other Member States.
The Minister's List	Under the Article 47(2) derogation applicants can benefit from recognition on the basis of "training as part of social betterment schemes or	Those who meet all three criteria: Social Betterment Scheme (Ministers List process); Article 46 compliant examination (Ministers List process); and seven years supervised practice



	<p>part-time university studies which satisfies the requirements referred to in Article 46, as attested by an examination in architecture passed by a person who has been working for seven years or more in the field of architecture under the supervision of an architect or architectural bureau.” Those without the seven years ‘supervision’ do not meet the requirements to benefit from the derogation and so are not eligible for ‘automatic recognition’.</p>	<p>can be awarded the MRIAI qualification which confers automatic recognition rights being listed as a qualification in Annex V.7.1 of the Directive. Those who do not meet all three Article 47(2) criteria (i.e. the seven years supervised practice) cannot be awarded the MRIAI which confers automatic recognition rights, but may be awarded the MRIAI(IRL) and on that basis may consider applying to other Member States under the General System (Articles 10 -15) should they meet the requirements. Registration also confers eligibility to seek consideration for recognition on a temporary and occasional basis (Article 5) in other Member States.</p>
<p>The Register Admission examination</p>	<p>Under the Article 47(2) derogation applicants can benefit from recognition on the basis of “training as part of social betterment schemes or part-time university studies which satisfies the requirements referred to in Article 46, as attested by an examination in architecture passed by a person who has been working for seven years or more in the field of architecture under the supervision of an architect or architectural bureau.” Those without the seven years ‘supervision’ are not eligible to benefit from the derogation</p>	<p>Those who meet all three criteria: Social Betterment Scheme (Register Admission Examination); Article 46 compliant examination (Register Admission Examination); and seven years supervised practice can be awarded the MRIAI qualification which confers automatic recognition rights being listed as a qualification in Annex V.7.1 of the Directive. Those who do not meet all three Article 47(2) criteria (i.e. the seven years supervised practice) cannot be awarded the MRIAI which confers automatic recognition rights, but may be awarded the MRIAI(IRL) and on that basis may consider applying to other Member States under the General System (Articles 10 -15) should they meet the requirements. Registration also confers eligibility to seek consideration for recognition on a temporary and occasional basis (Article 5) in other Member States.</p>

The RIAI carried out a pilot exercise for the purpose of testing and refining the Technical Assessment process in 2007. On the basis of this experience the RIAI understood that the vast majority of those registered on the basis of Technical Assessment would meet all three of the Article 47(2) criteria for automatic recognition, at the same time understanding that the other two mechanisms (recognition for the provision of services on a temporary and occasional basis and general system recognition) provide the possibility of market access elsewhere in the EU. It is our understanding that because the Commission has established competence in this area, Ireland, as a Member State, is not free to override or ignore the rules set.



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## Use of the MRIAI and MRIAI(IRL) Affixes

Registrants who wish to become RIAI members and who are not eligible under EU regulations to have the MRIAI qualification will be issued with membership certificates indicating MRIAI(IRL). However, as the '(IRL)' refinement to the affix relates solely to matters relating to recognition for the purposes of establishment in other EU Member States and beyond, registrants who become members of the RIAI and who sign a declaration undertaking not to seek recognition abroad on the basis of holding an MRIAI qualification will be able to use the 'MRIAI' affix (without the '(IRL)' appended) for business purposes within the State and will be able to get RIAI stamps with the MRIAI affix on them. No distinction will be made in the Register. This will prevent the inadvertent creation of an apparent 'second tier' of registered architects within the State and comply with the RIAI's stated objective that all architects in Ireland, having reached the required standard, should be considered equal, regardless of how that standard was demonstrated.

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## Technical Assessment Costs

The RIAI has submitted a proposal to the Minister for the Environment Heritage and Local Government, John Gormley, proposing a reduction in the Technical Assessment fee arising from an RIAI subvention of part of the costs for a fixed period. The proposal also outlines grounds upon which the State might offer an additional subvention. This follows on previous information provided by the RIAI to the Minister relating to State funding of Recognition of Prior Learning activities in the Higher Education sector. When the matter is decided upon a further bulletin will be issued. Refunds will be made to those who have paid a higher fee, before a decision is finalised.

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## Building Control (Amendment) Bill 2010

The RIAI referred the Building Control (Amendment) Bill for a legal Opinion on its operability within the context of the EU's Professional Qualifications Directive. The Opinion provided by Gerard Hogan S.C. concludes as follows:



- “A. Article 46 of the PQD Directive sets out the education standards which architects who qualified in Ireland *after* August 1987 must attain. Article 49 provides for a derogation in the case of persons qualified before that date, even if their educational qualifications did not otherwise satisfy the requirements of Article 46.
- B. If enacted, the 2010 Bill would, in effect, create a new category of persons entitled to be regarded as architects, even though they might not otherwise have satisfied the requirements of Article 46 and would not be in a position to do so, even though they did not hold themselves out as architects prior to August 1987.
- C. But the PQD Directive precludes - certainly by necessary implication - national legislation of this kind, since it sets out the requirements (pre and post August 1987) for the recognition and training of architects. Member States are not, in effect, free to create such a new category of persons, as, post August 1987, all Irish qualified architects must be in a position to satisfy the requirements of Article 46. As the 2010 Bill would allow Ireland to circumvent the requirements of Article 46 and the requirements of the Directive generally, in my view such a measure would plainly be unlawful as contrary to requirements of EU law.”