



ARCHITECTS' ALLIANCE



Better Regulation – YES

Closed Shop – NO

The Grandfather Clause

in Ireland, France, UK, Netherlands, Italy, Belgium & EU law

An Introductory Paper Prepared For The
Joint Committee On The Environment,
Culture And The Gaeltacht

28 October 2012

rev. 2

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THE SELF-EXTINGUISHING OR TIME-LIMITED GRANDFATHER CLAUSE

DEFINITIONS OF A GRANDFATHER CLAUSE

A clause exempting certain classes of people or things from the requirements of a piece of legislation affecting their previous rights, privileges, or practices.

- A grandfather clause is an exception that allows an old rule to continue to apply to some existing situations, when a new rule will apply to all future situations. (en.wikipedia.org/wiki/Grandfather_clause)
- An allowance in a new law that exempts its application to people who are already a part of the system. (www.legalhelp.ca/General-Articles/Legal-Glossary.html)
- A provision in a law that ensures that the law is not retroactive, that it does not render a previously legal thing illegal. (www.movemerealtor.com/index.cfm/fuseaction/terms.list/letter/)
- Provision that, when a law is changed or a new law is passed, those whose specific activity was legal under the previous law will be allowed to continue, by virtue of this provision. (www.new-jersey-real-estate-search.com/g/g1.html)

It must be remembered that a Grandfather Clause is not a substitute for a permanent mature entry route into the profession - such as those described in the BCA 2007 (S.14.2.e Social Betterment Scheme; S.14.2.f Prescribed Register Admission Examination - the PRAE).

A Grandfather Clause is temporary and self-extinguishing. It applies only to those practitioners who can demonstrate prior establishment.

Whereas the other procedures are "alternative" and permanent means of entering the profession, open to all who are job-trained under the new registration regime.

A Grandfather Clause recognises past achievements which of course cannot be embellished or added to for the purpose of registration - their scope and merit are already fixed.

The registration exercise is to demonstrate past work, to prove authorship, to submit tax, insurance or other such evidence and to thereby confirm prior establishment.

It is a purely objective assessment with no room for bias or misinterpretation.

On the otherhand, a Register Admission Examination is well-suited to the RPL/APL methodology with its contemporary scope, identifiable objectives, mentoring and revisiting/enhancement/honing of evidence, knowledge and skills.

As with "regular" school-based training and examination in architecture, this is a largely qualitative and subjective assessment.

EXAMPLES OF GRANDFATHER CLAUSES IN IRELAND

Road Traffic Act, 1961 S.I. 24/1961 S.43.1

A licence under Part III of the repealed Act in force at the commencement of this subsection
shall be deemed to be a driving licence.

Securing a driving licence under Part III of the repealed Act:

Road Traffic Act, 1933: Transitional Provisions Part III S.24

- (1) **Any person** who is not under the age of sixteen years and is not for the time being disqualified by or under this Act for holding a driving licence may apply to the licensing authority in whose functional area he ordinarily resides or carries on business for the grant to him by such authority of a driving licence or, where the circumstances so require, of a renewal of a driving licence then or previously held by him.
- (2) Every application under this section shall be in the prescribed form and shall be signed by the applicant and shall state the age of the applicant and such other particulars as shall be prescribed and shall either be accompanied by a certificate of fitness granted under Part VI of this Act to the applicant within one month before the date of the application or contain or be accompanied by a declaration in the following form signed by the applicant, that is to say:-
"I hereby declare that to the best of my knowledge I am not suffering from any disease or physical or mental disability which would be likely to cause the driving of a mechanically propelled vehicle in a public place by me to be a source of danger to the public."

Medical Practitioners' Act 1978

Since 1997, the '**Grandfather Clause**' has been available as a mechanism for entry into the Register of Medical Specialists under section 31(1)(a) of the Medical Practitioners Act 1978.

1999 Guidelines for the Employment of Psychologists in the Health Service

Full Membership is available to clinical psychologists who: Have completed a minimum of 2 years in-service training as a Clinical Psychologist prior to 1987 in accordance with **the grandfather clause** contained in the Society's 1999 Guidelines for the Employment of Psychologists in the Health Service.

Finance Bill 2010: Transfer Pricing Highlights: Price Waterhouse Coopers

A "**grandfather**" clause is included whereby arrangements entered into between related parties prior to 1 July 2010 are excluded from the new regime.

Property Services (Regulation) Act 2011: Licensing Requirements: S.4.2.1

Applicants for a Licence must meet certain "minimum qualification requirements" before a licence can be granted, namely:

Have a minimum academic qualification

or

Have appropriate *experience*.

Experience refers to the practical experience which a person may have gained through working in the provision of property services for a number of years.

This means having been lawfully engaged in the provision of the property service, the subject of the licence application, **for three of the five years** immediately preceding the making of the application.

EXAMPLES OF GRANDFATHER CLAUSES IN ARCHITECTURE

Many countries established professional registers for architects and included all their lawfully established practitioners under the new regime.

FRANCE

The legislation regulating the practice of architecture in France is dated from the 3rd of January 1977.

The name of the legislation is: "Loi n°77-2 du 3 janvier 1977 sur l'architecture".

The legislation regulates the practice of architecture rather than the title "Architect".

Article 37 of the legislation permitted established self-trained practitioners with **five years of experience** in the field of architecture gained prior to the publication of the law to be automatically listed on the French Register of Architects. Article 37 also details the composition of a committee in charge of assessing practitioners who did not comply with the requirement of five years experience.

UNITED KINGDOM

The legislation regulating the title of "Architect" in the United Kingdom is dated from 1931.

The name of the legislation is: "Architects (Registration) Act 1931".

Section 6 of the Act permitted self-trained architects **in practice** prior to the start of the legislation to be automatically listed on the register on the condition that their application was made within 2 years from the commencement of the Act. Those architects are also recognised under European Law.

Architects (Registration) Act 1931: 6. Qualifications for registration

- (1) Subject to the provisions of this Act, a person shall, on application made to the Council in the prescribed manner and on payment of the prescribed fee, be entitled to be registered under this Act, if the Council are satisfied on a report of the Admission Committee —
- (a) that he is an architect member of the Royal Academy or of the Royal Scottish Academy; **or**
- (b) that his application for registration was made within two years from the commencement of this Act and that **at the commencement of this Act he was, or had been, practising as an architect in the United Kingdom; or**
- (c) that he has passed any examination in architecture which is for the time being recognised by the Council; **or**
- (d) that he possesses the prescribed qualifications.

Architects Registration Act 1938: S.2.1. Date of application for registration

Notwithstanding anything in the principal Act, a person shall, on application made to the Council in the prescribed manner after the passing of this Act and before the first day of August nineteen hundred and forty, and on payment of the prescribed fee, be entitled to be registered under the principal Act, if he proves, to the satisfaction of the Council or, on an appeal under this section, to the satisfaction of the tribunal hearing the appeal, that **at the date of the passing of this Act he was, or had been, practising as an architect in the United Kingdom or in some other part of His Majesty's Dominions.**

Architects' Directive 85/384/EEC of 10-06-1985: Article 11.i. - United Kingdom

A certificate stating that its holder has **an established right** to hold the professional title of architect by virtue of section 6 (1) a, 6 (1) b or 6 (1) d of the Architects Registration Act 1931 (Architect);

A certificate stating that its holder has **an established right** to hold the professional title of architect by virtue of section 2 of the Architects Registration Act 1938 (Architect).

Directive 2005/36/EC Of The European Parliament And Of The Council: Annex VI, Table 6 - UK

A certificate stating that its holder has **an acquired right** to hold the professional title of architect by virtue of section 6 (1) a, 6 (1) b or 6 (1) of the Architects Registration Act 1931 (Architect);

A certificate stating that its holder has **an acquired right** to hold the professional title of architect by virtue of section 2 of the Architects Registration Act 1938 (Architect).

NETHERLANDS

The legislation regulating the title of "Architect" in the Netherlands is dated from the 7th of July 1987.

The Name of the Legislation is: "Wet op de architectentitel van 7 juli 1987".

Clarification:-

Architects' Directive 85/384/EEC of 10-06-1985: Article 11.h. - Netherlands

A certificate issued by the competent authorities only to persons who have reached **the age of 40 years** before the date of entry into force of this Directive, certifying that, over a period of at least **five years** immediately prior to that date, the person concerned had pursued architectural activities the nature and importance of which, in accordance with Netherlands requirements, guarantee that he is competent to pursue those activities (architect);

From the Fair Trade Commission Report 23 March 1990 S.6.13

It was stated by IAS that the Netherlands authorities had succeeded in having persons with no academic qualifications included in the Directive and that **there was no reason** why Ireland should not also have been able to have similar persons, who have been practising in Ireland recognised.

ITALY

The legislation regulating the practice of architecture in Italy is dated from the 24th of June 1923.

The name of the legislation is: "legge 24 June 1923 No. 1395".

Article 9 of the legislation permitted self-taught practitioners with **10 years of experience** who applied within 6 months of the publication of the law to be automatically listed on the Register.

Article 9 also permitted those with an alternative qualification in architectural design and with **5 years of experience** who applied within 6 months of the publication of the law, to be automatically listed on the Register.

BELGIUM

The legislation regulating the practice of architecture in Belgium is dated from the 20th of February 1939.

The name of the legislation is: "Loi du 20 fevrier 1939".

Article 7 of the legislation permitted self-taught practitioners born before the 1st of January 1907 (**32 years and 2 months old**) to be automatically listed on the Register.

Those born between the 1st of January 1907 and the 31st of December 1916 (23 years and 2 months old) were subject to an examination prior to be listed on the Register.

IRELAND

Apart from the first entry below (being guidelines from the Law Society's Conveyancing Committee which were adopted until recently by all/most banks and building societies) it is only possible to refer to the **recommendations for an Architects' Grandfather Clause** that have been repeatedly made - by officially appointed bodies and others, together with the recent confirmations/authorisations from the European Commission in this matter.

Under the entirely new regime imposed by Part 3 of the BCA 2007 (Building Control Act 2007), prior - establishment as an architect in the State was deemed insufficient for registration purposes. In other words, there is no Grandfather Clause for Ireland's independent architects.

The inevitable exceptions were the existing Grandfather architects of the Royal Institute of the Architects of Ireland Limited – the State's new registration body.

It is important to realize that the legal registration standard here is not the European standard. Instead, Government agreed to implement RIAI Ltd's supposed "professional standard". These are rules of admission which specifically exclude Directive-compliant **Irish graduates** from full membership of the Royal club.

For Irish graduates the agreement means:-

- (i) no automatic registration in the State and
- (ii) the back-door removal of their European rights under the Directive.

At the same time, European Law ensures that Directive-compliant **non-Irish graduates** cannot be denied automatic registration in the State.

The *quid pro quo* for accepting this elitist arrangement was the Royal Institute's agreement to:-

- (i) guarantee full, automatic membership (MRIAI) to the Minister's List architects (which resolved a Government dilemma originating from the 1990 FTC report – see Principal Conclusions Para. 18.13.3) and
- (ii) administer the new self-regulatory, registration system without any cost to the State.

However, a presumably unforeseen breach of the trust which the Directive depends upon has arisen thereby. It requires fairly urgent rectification - whether unilaterally by the State or else by the European Commission.

Jan/Feb 2010: Law Society Gazette: page 52, "Who Should Certify Compliance in 2010?"

In future, the Conveyancing Committee feels that it is reasonable for solicitors to accept certificates of compliance or certificates of opinion from:

- Persons who are on the register of architects,
- **Persons who have been in practice as architects or engineers on their own account for ten years,**
- Qualified engineers and qualified building surveyors practising in the construction industry,
- Persons from another jurisdiction in the European Union whose qualification is entitled to recognition in Ireland under the *Architects' Directive*.

23 March 1990: The Fair Trade Commission Report - Architects, Surveyors, Auctioneers and Valuers: page 56, S.8.34.6

There would need to be a **"grandfather" clause** for existing, competent practitioners.

April 1997: Strategic Review of the Construction Industry: page 15, S.3.29

The proposals should be formulated in consultation with other bodies representing architects and engineers, and should acknowledge the established right of those in practice, without formal qualifications, for many years (via a **'grandfather clause'**).

2001: Professions - Regulation and Competition Policy, Hurley, G: page 68

Some provision would be made for **'grandfather' clauses**, for individuals already in practice prior to the introduction of statutory registration.

March 2003: INDECON Report Assessment of Restrictions in the Supply of Professional Services: Summary, page XV

The way in which **'Grandfather' Independent Architects** and some members of the Group of Independent Architects in Ireland (GIAI) will be assessed for entry to the proposed new register of architects could act as a barrier to entry to the profession going forward.

March 2007: Building Control Bill 2005, Report Stage

Deputy Ruari Quinn: I move amendment No. 8:

In page 6, between lines 14 and 15, to insert the following:

“grandfather clause” means the provisions of this Act (principally section 20) which enables a person to be registered as an architect based on training acquired by practical means.”

(Amendment accepted but later removed)

Deputy Fergus O’Dowd: I move amendment No. 9:

In page 6, between lines 14 and 15, to insert the following:

“grandfather clause” means the provisions of this Act (principally as described in *sections 12 and 20*) which enable a person to be registered as an architect, based on training acquired by practical means and acknowledging their established right to practice, without formal qualifications, prior to the enactment of this Act”.

(Amendment put. The Dáil divided: Tá, 36; Níl, 54. Amendment declared lost)

EUROPEAN UNION

Joint Answer given by Mr. Barnier on behalf of the Commission (21 Feb 2012)
to Nessa Childers MEP & Marian Harkin MEP : E-012450/2011 and E-000673/2012

The Commission cannot take a position on the conformity with Union law of legislation not yet adopted by Member States.

The response to the Honourable Member's question must, therefore, be limited to general observations on the applicable Union law and in particular relevant provisions of Directive 2005/36/EC on the recognition of professional qualifications.

Directive 2005/36/EC facilitates the free movement of architects in the single market by establishing rules according to which Member States which limit access to the profession of architect to holders of particular qualifications must recognise qualifications which were obtained in another Member State. Article 46 of the Directive defines minimum training requirements for architects.

Qualifications which meet these requirements are listed in Annex V of the Directive.

Their holders can benefit from automatic recognition when they move to another Member State.

The minimum training requirements referred to in Article 46 are not binding on Member States. In other words, the Directive does not prohibit Member States from granting access to the profession of architect on their own territory to persons whose qualifications do not meet the Article 46 requirements, including any persons whose qualifications would be subject to **a grandfathering clause**. However, these persons would not be able to benefit from the automatic recognition of their qualifications in another Member State. They would be subject to the General System of recognition, in accordance with Article 10 of the Directive, which entails the comparison of their qualifications with those required in the host Member State.

Answer given by Mr Barnier on behalf of the Commission (22 Aug 2012)
to Phil Prendergast MEP: E-007478/2012

The Commission is aware of a number of questions with regards to the compatibility of the Irish Building Control Act 2007 with EU law. **It has already undertaken a detailed investigation which is on-going**. In this context, the Commission will also consider all the points raised by the Honourable Member and will inform the Honourable Member of the outcome as soon as possible.

Answer given by Mr Barnier on behalf of the Commission (28 Aug 2012)
to Nessa Childers MEP: P-007738/2012

Directive 2005/36/EC on the recognition of professional qualifications only concerns professionals who wish to move to another Member State.

It does not apply when they seek to practice in the same country in which they obtained their qualifications.

The Commission's joint answer to questions E-012450/2011 and E-000673/2012 reflects this principle in stating that persons who do not meet the minimum training requirements of Article 46 "would not be able to benefit from the automatic recognition of their qualifications in another Member State".

The solution is different for a few health professions, such as doctors, according to Article 21 (6) of Directive 2005/36/EC.

Consequently, the Directive does not restrict the terms of any national law provisions applicable to architects qualified in the territory of the Member State in question.

Answer given by Mr Barnier on behalf of the Commission (13 Sep 2012)
to Phil Prendergast MEP: E-007522/2012

The Commission has proposed¹ that new minimum training requirements become the basis for automatic recognition of architectural qualifications two years after the deadline for the transposition of the amended Directive. Architects eligible for automatic recognition under the current rules whose training started before that date would benefit from an **acquired rights regime**.

SUPPLEMENTARY INFORMATION

May 2012: The Competition Authority Website

Recommendation for an independent regulator not accepted

We recommended that the new regulatory body for architects should be independent of existing professional representative organisations.

This was to avoid any possible conflict of interest between a representative body (whose job it is to protect the interests of members) and a regulator (whose duty is to protect the public interest).

Our recommendation on this matter was not accepted.

Under the Building Control Act 2007, the RIAI, which is the main professional representative body for architects in Ireland, was appointed as the new registration body and Competent Authority for architects. In November 2009, a new Register of Architects was introduced.

The Register is administered and regulated by the RIAI.

March 2006: The Competition Authority Architects Report

The Competition Authority is concerned that proposed changes in how the architectural profession is regulated in Ireland will have negative consequences for consumers and for some members of the profession.

Extracts from: The Fair Trade Commission – Report of a Study of Restrictions in the Professions

9.11**RIAI argued very strongly that such a policy (*fee competition*) would, in respect of the architectural profession, be against the public interest.**

A summary was given of sixteen main arguments and these are reproduced below. Each one is examined separately and observations are made on it.

1. Fee competition will destroy professionalism in architecture.
2. The existing recommended fee scales are operated to protect the public and provide architects with no more than a reasonable income.
3. Many aspects of the architect's activities are incapable of accurate definition, which is a prerequisite of any fair system of price competition.
4. Reductions in fees brought about by competition will inevitably reduce the quality of architecture with a consequent detrimental effect on the built environment.

5. Traditional stable employment arrangements are more likely to be abandoned for a system of hire on contract as a result of uncertainties brought about by fee competition. The resulting disbanding of architectural teams is a loss of ability and experience.
6. The selection of architects will become more difficult in a system of price competition since it will add this criterion to be balanced against those of ability and experience.
7. While the client organisation may, in certain instances, feel that a fee is too low, it may be unable to reject it because of the adverse reaction when such became known.
8. Competition between architects already exists. Architects compete on the quality of their design and service. The system ensures the maintenance of reasonable standards. Architects would support further development of this system.
9. Fee competition will permit the continuation of architectural practices who provide an inferior service on the grounds that it is cheap.
10. In the absence of registration in Ireland, the decline in the standard of architecture will be even more rapid.
11. The premise on which the whole proposal is founded is wrong. Architects' fees are not excessive and architects do compete.
12. ,13, 14, 15 and 16. **Every other country in Europe** operates on the basis of agreed fee scales with the exception of Britain. Fee scales are enforced by law in France, Germany, Italy and the Netherlands.

9.28 In the course of the study, information was obtained on fee practices and arrangements in a variety of countries and this information is set out hereunder

In general it reveals a picture quite at variance from that implied by RIAI.

By and large, neither mandatory nor recommended scales operate in the countries examined.

9.48 In the responses given to the arguments of RIAI, it is clear that the argument that **competition on fees would destroy the architectural profession is not accepted**

Two decades later, that mischievous and entirely self-serving cry has been revived.

This time it's a Grandfather Clause that will destroy the architectural profession.

The truth is undeniable:
a Grandfather Clause will restore competition