

INFORMATION NOTE

Archaeological excavation competency interviews and Archaeologists from European Union (EU) and European Economic Area (EEA) Member States wishing to provide archaeological excavation services in Ireland (i.e. Republic of Ireland) on a temporary or occasional basis

1. Introduction

Section 26 of the National Monuments Act 1930 (as amended) provides that archaeological excavation must only be carried out under licence issued by the Minister for Culture, Heritage and the Gaeltacht. Policy on the issuing of such licences is set out in the document *Policy and Guidelines on Archaeological Excavation* (Government of Ireland 1999; available at www.archaeology.ie under “Publications”). A key aspect of this (see section 2.3 of the document) is that first time applicants for archaeological excavation licences will be expected to have demonstrated their competency through attendance at an interview. The headings under which competency is addressed at that interview are set out in the policy document.

In line with the key aim of promoting development of a free market in provision of services across the EU and EEA, EU law limits the extent to which EU and EEA Member States can restrict professionals based in one Member State from providing services in another Member State. The need to comply with this results, in certain circumstances, in a different approach being taken in regard to first time archaeological excavation licence applicants from such Member States. In such cases the approach will be in accordance with the relevant EU Directive (see below) and will not include an interview.

The European Economic Area (EEA) includes the EU Member States along with Iceland, Liechtenstein and Norway. Although Switzerland is not part of either the EU or EEA, similar rules are applicable. The position arising from the departure of the United Kingdom (UK) from the EU is referred to later in the note.

This note is intended to assist applicants in understanding whether or not they come within the scope of these different procedures and what those procedures involve. It is not legal advice or a legal interpretation of the legislation referred to. Each case arising will have to be considered on its facts and by reference to the detailed provisions of the relevant legislation. What is set out here is only a summary of the legislation.

What is covered here relates to persons who wish to provide services in Ireland on a temporary or occasional basis while remaining based in another Member State of the EU or EEA. Persons who wish to base themselves in Ireland on a long term basis (i.e. to exercise rights of establishment under EU law) are covered by different legal provisions.

2. Legal basis

One of the key measures the EU has adopted to promote free provision of services is the Directive on the Recognition of Professional Qualifications (Directive 2005/36/EC as amended by Directive 2013/55/EU), a copy of which can be viewed at the following link:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0036-20190415&qid=1565866742825&from=EN>

Further information on the Directive can be found here:

<https://www.education.ie/en/The-Education-System/Qualifications-Recognition/FAQs.html>

A Directive is one of the main ways in which the EU legislates. While in some cases a Directive may itself create enforceable legal obligations within Member States, it is usually necessary for each Member State to write the Directive into its own national law (to “transpose it”). In Ireland, the Recognition of Professional Qualifications Directive (referred to below as “the Directive”) has been transposed into Irish law by means of an order (a “statutory instrument” or “S.I.”) made by the Minister for Education and Skills using powers Ministers have under the European Communities Act 1972. This order is known as S.I. No. 8 of 2017, European Union (Recognition of Professional Qualifications) Regulations 2017. It is referred to below as “the Regulations”. The Regulations can be viewed at the following link:

<http://www.irishstatutebook.ie/eli/2017/si/8/made/en/print>

3. What do the Regulations say about temporary or occasional provision of services and how is this applicable to Archaeologists?

The key principle is set out in Regulation 11(1) of the Regulations:

“..., a competent authority in the State [i.e. Ireland, Republic of] shall not restrict, for any reason relating to professional qualifications, the free provision of services in a regulated profession in the State on a temporary and occasional basis, where—

- (a) the service provider is legally established in a Member State other than the State for the purpose of pursuing the same profession in that Member State,
- (b) the service provider moves to the State to pursue the profession on a temporary and occasional basis, and
- (c) if neither the profession, nor the education and training leading to it, are regulated in the home Member State, the service provider has pursued that profession in one or several Member States for at least one year during the last 10 years preceding the provision of services.”

The profession of Archaeologist is recognised under Schedule 1 of the Regulations as being a “regulated profession” in Ireland (i.e. “the State” as referred to in the extract above) and the Minister for Culture, Heritage and the Gaeltacht as being the relevant competent authority in Ireland. The decision to so recognise the profession of Archaeologist in Ireland was based on the definition of “regulated profession” set out in the Directive and was in line with the advice of the European Commission as to its applicability to that profession as it operates in Ireland (the Commission being the EU body charged with ensuring implementation of Directives by Member States).

4. *What does the above mean in practice in relation to Archaeologists based in other Member States who wish to provide archaeological excavation services in Ireland (i.e. Republic of Ireland) on a temporary or occasional basis?*

The practical effect of this is that Archaeologists based in another Member State where Archaeologist is (for the purposes of the Directive) a regulated profession will not be expected to have demonstrated their competency through attendance at an interview. Member States where Archaeologist is a regulated profession for the purposes of the Directive can be identified on a website maintained by the European Commission: <https://ec.europa.eu/growth/tools-databases/regprof/> . This position will also apply to Archaeologists based in another Member State where Archaeologist is not a regulated profession but who have practiced as director of archaeological excavations for at least one year out of the ten years preceding their application for an archaeological excavation licence in Ireland.

It must be emphasised that no one in any circumstances (whatever category they belong to and wherever based) is ever exempted, by reason of the Directive or the Regulations, from the requirement to obtain an archaeological excavation licence before carrying out a particular archaeological excavation. All applications for archaeological excavation licences continue to be examined on their merits and excavations, if licenced, must in all cases be conducted in accordance with licence conditions. This includes requirements that they be conducted in accordance with applicable standards and guidelines. The Directive and the Regulations address the issue of prior checks on qualifications, and do not remove requirements for licences in respect of particular activities.

5. *Procedures which must be followed by an Archaeologist availing of the Regulations so as to apply for an archaeological excavation licence in Ireland without attending the archaeological excavation competency interview*

Such Archaeologist must inform the National Monument Service by way of a written declaration in accordance with Regulation 13 of the Regulations. This declaration must be made the first time the Archaeologist moves from another Member State to provide services in Ireland. It must also be renewed in each other year the Archaeologist intends to provide services in Ireland.

This declaration should be made using the template provided by the National Monuments Service on www.archaeology.ie (“Forms”) – see form NMS 1-2020. It must be sent by email or letter to licensingsection@chg.gov.ie, either in advance of or accompanying the relevant licence application. In accordance with Regulation 13 of the Regulations, the first time the declaration is submitted, or any time there is a material change in circumstances, it must be accompanied by the following documents:

- Proof of the nationality of the Archaeologist;
- Attestation certifying that the Archaeologist is legally established in a Member State other than Ireland for the purpose of pursuing the activities concerned and that he or she is not prohibited from practising, even temporarily, at the moment of delivering the attestation;
- Evidence of professional qualifications;

- If the Archaeologist is claiming to come within the Directive and Regulations by reason of practice as a director of archaeological excavations for at least one year out of the previous ten years, then proof of such practice.

6. Checks by National Monuments Service of qualifications of Archaeologists seeking to avail of the Regulations

Certain professions are listed in Schedule 3 of the Regulations as being ones which have public health or safety implications. Archaeologist is one of the listed professions. Accordingly it comes within the scope of Regulation 15 of the Regulations. The effect of this is that National Monuments Service may check the qualifications of Archaeologists seeking to avail of the Regulations, but only where the purpose of the check is to avoid serious damage to the health or safety of the service recipient due to a lack of professional qualification of the Archaeologist and where the check does not go beyond what is necessary for that purpose.

Details regarding the procedures applicable to such checks are set out in Regulation 15. By way of summary of the key aspects of this, the following is noted. Within one month of receipt of a declaration and accompanying documents National Monuments Service will inform the Archaeologist that -

1. it has decided not to check his or her professional qualifications, or
2. having checked his or her professional qualifications it has decided to
 - a. require the Archaeologist to take an aptitude test, or
 - b. process applications by the Archaeologist for archaeological excavation licences.

7. Applicability to Archaeologists based in UK (including Northern Ireland)

The UK left the EU on 31 January 2020. However, existing rules remain in place during the transition period up to the end of 2020. This note will be revised as necessary subsequent to the end of the transition period.

8. Reliance by Archaeologists based in Ireland (i.e. Republic of Ireland) on the Directive in regard to provision by them of services in other EU or EEA Member States

As Ireland is a Member State of the EU, Archaeologists based in Ireland may seek to rely on the Directive to facilitate provision by them of archaeological services on a temporary or occasional basis in other EU or EEA Member States where Archaeologist is a regulated profession. Queries on so doing should be addressed to the designated competent authority in such Member State.

**National Monuments Service
Department of Culture, Heritage and the Gaeltacht
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