

EXPLANATORY MEMORANDUM TO
THE STREET WORKS (QUALIFICATIONS OF OPERATIVES AND
SUPERVISORS) (ENGLAND) REGULATIONS 2016

2016 No. 1147

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations describe the qualifications needed by trained operatives and supervisors to undertake street works and specify requirements for assessment and reassessment. The Regulations also allow for the recognition of foreign professional qualifications as required by European Directive 2005/36/EC of 7th September 2005.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These Regulations set out the qualifications operatives and supervisors need to fulfil the requirements of section 67 of the New Roads and Street Works Act 1991. Section 67 requires that each set of street works has at least one trained operative with a prescribed street works qualification on-site while works are taking place and (in most cases) be supervised by a person with a prescribed street works supervisor qualification. They also allow for the recognition of foreign professional qualifications as required by European Directive 2005/36/EC of 7th September 2005.
- 4.2 The qualifications were first introduced by the Street Works (Qualifications of Supervisors and Operatives) Regulations 1992 (S.I. 1992/1687) in relation to England and Wales. In relation to England, those Regulations were replaced by the Street Works (Qualifications of Supervisors and Operatives) (England) Regulations 2009 (S.I. 2009/2257) (“the 2009 Regulations”). The 2009 Regulations were subsequently amended in 2015 by the Street Works (Qualifications of Supervisors and Operatives) (England) (Amendment) Regulations 2015 (S.I. 2015/384) (“the 2015 Regulations”). These Regulations replace the 2009 Regulations (as amended).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 Regulations for street works qualifications were first made in 1992. Under the 1992 Regulations, operatives and supervisors gained certificates of competence in various types of work that were then registered on the street works qualifications register (SWQR). Registration lasted for five years and a worker then paid a fee to re-register to maintain recognition as a qualified operative or supervisor. However there was no requirement to demonstrate that knowledge and understanding of the type of work covered by the certificate had been retained.
- 7.2 There were growing concerns that substantial numbers of street works were not being carried out to the standards set by prescribed codes and specifications despite using qualified operatives and supervisors. This was noted from incident and accident investigation reports, inspection sampling and national quality audit analysis. There were also concerns that workers might not be made aware of revisions to codes of practice and specifications that had been made since they had qualified.
- 7.3 To address these concerns, the 2009 Regulations were introduced. Under these Regulations, qualified operatives and supervisors were required to complete a reassessment before their certificate could be re-registered on the SWQR. The purpose was to ensure that workers maintained their knowledge to the required standards and were made aware of changes to best practice implemented since they were last assessed.
- 7.4 Unfortunately, the 2009 Regulations carried over a principle from one of the previous regulations that was unsuited to the introduction of reassessment. This has caused unnecessary but significant financial difficulties for some workers - see paragraph 7.7.
- 7.5 The 2009 Regulations introduced a new certificate for operatives who only set out and maintain signing, lighting and guarding of the works site. An equivalent supervisory qualification was also created. In addition, the regulations allowed workers from member states of the European Union (and Iceland, Liechtenstein, Norway and Switzerland) with equivalent guarantees of skill and competence to be treated as qualified operatives and supervisors.
- 7.6 The amendments to the 2009 Regulations made by the 2015 Regulations removed the named organisations eligible to act as approving bodies from the regulations in order to open up the market for providing these services.
- 7.7 The initial driver for this latest set of Regulations was the need to address a particular situation that may arise from time to time. At present, a candidate who passes reassessment to renew a certificate can lose it entirely if the assessment centre failed to apply for the certificate to be re-registered in time. This is an area which has given rise to a number of complaints and some Ministerial correspondence. This issue will be addressed by the first bullet in paragraph 7.9.

- 7.8 In examining the 2009 Regulations in more detail, it became apparent that there were several other issues that could be addressed at the same time. The key change here is the new certificate structure which rationalises the present arrangements.
- 7.9 The new Regulations will:
- relate the life of certificates to the date of certification instead of the date the application was made to register the certificate;
 - introduce a more flexible system that allows candidates to renew a certificate by reassessment at any time during its life;
 - allow candidates to renew a certificate by reassessment up to five years after it has expired;
 - give candidates who choose to renew certificates by assessment the same flexibility given to candidates renewing by reassessment;
 - allow reassessment applications to be accompanied by evidence of the relevant certificate of competence instead of the certificate itself - brings process into line with initial assessment registration process;
 - remove the requirement for the approved body to provide certificates directly to candidates;
 - rationalise the certificate system to remove all overlap in subject matter between the various qualifications;
 - make it easier for local authority inspectors to determine what a candidate is qualified to do from a quick glance at his street works card; and
 - exempt the fire and rescue services from the need to have a qualified operative present when lifting access covers to check fire hydrants.
- 7.10 Overall, the amendments will streamline current processes, introduce more flexibility, and reduce the financial burden on industry.

8. Consultation outcome

- 8.1 The new regulations were developed in conjunction with the Training and Accreditation Group (TAG) which is a Highway Authorities and Utilities Committee (UK) working group. TAG includes representatives from utility companies, highway authorities, the four awarding bodies currently active in street works qualifications (CABWI, City and Guilds of London, the Scottish Qualifications Authority, and Lantra), the registration body, the devolved administrations and the DfT.
- 8.2 An 8 week public consultation was launched by the DfT on 2 September 2015, ending on 28 October 2015. DfT informed stakeholders through HAUC (UK), TAG, Joint Authorities Group (JAG), and the National Joint Utilities Group (NJUG).
- 8.3 There were 25 respondents in total, two of whom provided comment but did not answer the questions. 13 were utility companies and the rest comprised highway authorities, training organisations, awarding organisations, contractors, the Joint Authorities Group, the National Joint Utilities Group and the Scottish Road Works Commissioner.
- 8.4 Although the initial reason for proposing the changes was to address the anomaly about re-registration, the solution here was fairly straightforward. The key consultation issue therefore became the one that would have the greatest impact on practitioners generally, i.e. the rationalisation of the system of units and certificates of

competence. It was unanimously accepted and was particularly welcomed by the two main street works bodies, JAG and NJUG.

- 8.5 The consultation was very well received. Almost every proposal was accepted as presented, and the few that were not only required minor changes to make them acceptable. A copy of the consultation and the DfT response can be found at: <https://www.gov.uk/government/consultations/street-works-qualifications-regulations-in-england-proposed-amendments>.

9. Guidance

- 9.1 The Department will be updating the current guidance on street works qualifications which was published in September 2009. We are also working with the registration body and awarding organisations to ensure the changes brought about by the amendments are publicised appropriately.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is limited to a one-off cost to change the street works register to accommodate the revised certificate structure and new rules.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 A review provision has been provided for in regulation 16 of this instrument.

13. Contact

- 13.1 Gereint Killa at the Department for Transport (telephone: 020 7944 8691 or email: gereint.killa@dft.gsi.gov.uk) can answer any queries regarding the instrument.