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Consultation on The Road Works (Qualifications of Operatives and Supervisors)(Scotland) Regulations 2016

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Part 1 - About this Consultation

Background

1.1 Section 126 of the New Roads and Street Works Act 1991 (NRSWA), imposes an obligation on road works undertakers to ensure that at all times when work is in progress, there is at least one suitably trained operative on site and that, in most cases, the works are supervised by someone with an appropriate supervisor qualification.

Objective and Scope of Consultation

1.2 Scottish Ministers propose to introduce The Road Works (Qualifications of Operatives and Supervisors) (Scotland) Regulations 2016, the aim of which is to require trained road works operatives and supervisors who wish to re-register their qualifications to do so on the basis of having their competency successfully reassessed. At the same time we also wish to revise the qualification structure.

1.3 The Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 1992 describes a number of units of competency that must be completed by approved operatives or supervisors at road works. These regulations were made under Section 126 and 163(1) of the New Roads and Street Works Act 1991. These regulations now need updating, in particular to introduce the requirement for the reassessment of road workers qualifications every 5 years, as is the case already in England. We expect the other devolved administrations in Wales and Northern Ireland will carry out similar consultations going forward.

1.4 Road works are carried out by or on behalf of the four main utility groups, water, gas, electric and telecoms. Most utility companies are statutory undertakers (i.e. they have a statutory right to install, inspect, maintain, repair, or replace apparatus). Roads Authorities may also grant road works licences to others. Statutory undertakers and licensees are collectively referred to as undertakers.

1.5 In Scotland, the current legislation is SSI 1992 No 1675, The Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 1992 ("the 1992 regulations"). There are separate regulations for England, Wales and Northern Ireland, but generally speaking the Devolved Administrations cooperate with the sector to ensure a level of consistency throughout the UK. A copy of the 1992 regulations can be obtained [here](#) and the basic text is also attached at Annex C for ease of reference.

1.6 The proposed regulations will improve on the 1992 regulations by:-

- Amending the list of named approved bodies to include other training organisations which successfully apply to the Scottish Ministers for recognition;
- Revising the structure of qualifications required for utility road work operatives and supervisors;

- Enhancing provisions for the registration of qualifications on the approved register (Street Works Qualification Register – SWQR, which is managed by the SQA for the whole of the UK);
- Amending the qualification requirements for trained operatives and supervisors within the new regulations to provide for reassessment;
- Prescribing that candidates applying to re-register their qualifications must do so on the basis of having successfully completed a reassessment;
- Providing for flexibility in allowing early re-registration of qualifications in certain circumstances;
- Introducing the requirement to comply with the European Union (Recognition of Professional Qualifications) Regulations 2015 to allow for cross-border recognition of Scottish awarded road works qualifications.

1.7 The proposals contained in this consultation are intended to simplify and improve on existing provisions and rationalise the road works training process.

Duration of Consultation

1.8 The consultation period begins on 8 July 2016 and will run for 12 weeks until 30 September 2016. Please ensure that your response reaches us before the closing date as responses received after this date will not be considered in the analysis.

How to Respond

1.9 We recognise that there may be some additional costs to industry associated with the requirement to reassess competencies every 5 years when re-registering qualifications. Some utilities may already operate under a comparable regime for company operations undertaken in England. We would therefore welcome your help in gathering information and views from businesses and individuals on any potential financial impact by completing the Business Regulatory Impact Assessment (BRIA) section at the end of each question. A Partial BRIA has been published with this consultation document. A full BRIA will be published along with the new regulations subject to Parliamentary consideration and approval.

1.10 Please use the link below to register your response on Citizen Space : <https://consult.scotland.gov.uk/partnerships-and-concessionary-travel/road-works-qualifications>

1.11 Handwritten responses will be accepted, although the online method is preferable. You should use the Consultation Questionnaire Word document provided as this will aid our analysis of the responses received.

1.12 Please note that responses not using either the online Citizen Space survey or the Consultation Questionnaire Word document provided might not be considered in the analysis of this consultation.

Paper copy responses may be mailed to : -

Susan Ewart
Road Works Policy Officer
Transport Scotland
Area 2 D-North
Victoria Quay
Edinburgh
EH6 6QQ

When responding, please state whether you are responding as an individual or as a member of an organisation, in which case you should give the name of the organisation on behalf of which you are responding.

Handling your Response

1.13 We need to know how you wish your response to be handled, and in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form (“RIF”) which accompanies this form (or print off the RIF attached at Annex D if you prefer to submit a paper copy) with your response as this will ensure that we treat your response accordingly.

1.14 If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly. All respondents should, however, be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004 therefore would have to consider any request relating to responses made to this consultation exercise. If appropriate, please explain why you need to keep details of your response confidential. We will take your reasons into account if someone asks for this information under Freedom of Information legislation, however, because of the law we cannot promise that we will always be able to keep those details confidential.

Part 2 - Current arrangements and new proposals

2.1 Scottish Ministers propose to make certain changes to the regime currently in place as set out in Scottish Statutory Instrument SSI 1992 No 1675, The Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 1992 (the 1992 Regulations).

2.2 The proposed changes we wish to consult on appear below and collectively form the basis of the consultation questions in Annex B.

Proposed changes in detail

Proposed change 1 – change the order in which the sections on supervisors and operatives appear in the regulations ^{1 2}
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- | |
|---|
| <ul style="list-style-type: none">a) Place operatives before supervisors in the title of the Road Works (Qualifications of Operatives and Supervisors)(Scotland) Regulations 2016; andb) within the body of the regulations and associated schedules |
|---|

2.3 The first of the proposed changes is a matter of logical sequencing. Within the current regulations the section on “Supervisors” comes before the section on “Operatives”. In terms of a hierarchy of qualifications where the expected order of attainment might be to begin as an operative and later on become a supervisor, the current order seems counterintuitive. We propose to change this order for the new regulations to reflect what we believe to be a more logical approach.

Proposed change 2 – changing the way Approved Bodies are defined ³
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We propose to make it clearer how other organisations can be recognised by the Scottish Ministers and be added to the list of approved bodies within Scotland.
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2.4 We propose to prescribe the circumstances under which other organisations can be recognised as a body approved by the Scottish Ministers for issuing relevant road works qualifications.

2.5 We will consult, on receipt of an application, with relevant bodies within the sector to help the Scottish Ministers to reach a decision. These bodies may include the Roads Authorities and Utilities Committee (Scotland) (RAUC(S)), the Scottish Qualifications Authority (Accreditation) (SQA (Accreditation)), the Scottish Road

¹ The title of the current regulations is The road Works (Qualifications of Supervisors and Operatives)(Scotland) regulations 1992.

² Supervisors are dealt with in Article 3 of the 1992 regulations and Operatives in Article 4.

³ Approved bodies are given in a list of organisations in Article 5 of the 1992 regulations.

Works Commissioner (SRWC) and the Highway Authorities and Utilities Committee (UK) (HAUC(UK)).

Proposed change 3 – simplify the process of registering qualifications ⁴

The proposed regulations will seek to simplify the process by providing for electronic communication of examination results and qualifications held.

2.6 The 1992 regulations envisage a process where the candidate is assessed as competent by an Approved Assessment Centre, which then verifies this with the Approved Register (presently the Street Works Qualification Register (SWQR), which is managed by the SQA). The candidate is then sent their certificate by the Awarding Body. Through a separate administrative process the SWQR registers their qualifications to facilitate the production of Street Works cards

2.7 The proposed regulations will allow for the electronic communication of candidate results, and remove the need for awarding bodies to be the one applying to register the qualification in the approved register.

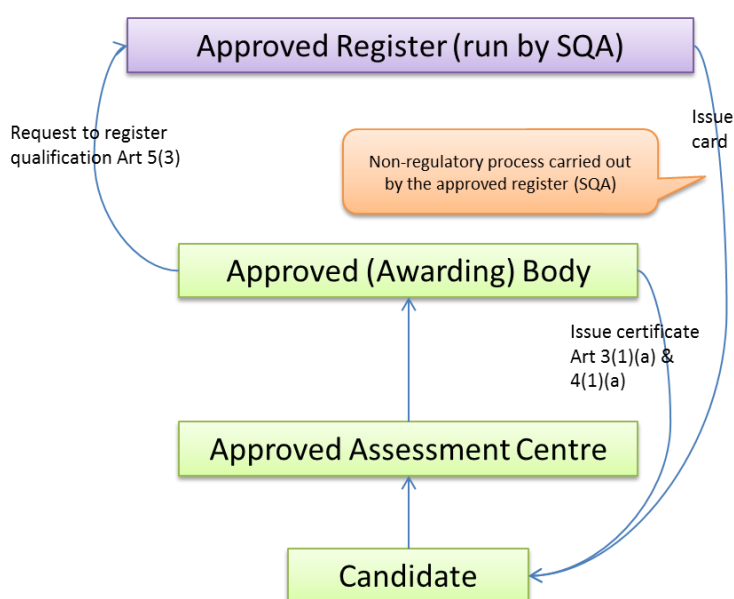


Figure 1 : Current registration process

2.8 Currently, awarding bodies are required under the 1992 regulations to issue certificates to trained operatives and supervisors. In practice the certificates are often issued to assessment centres or employers, who then pass them on to the candidates. What is most important is that the information is passed onto the approved register which in most cases takes place electronically, usually directly from the approved assessment centre. Removing the statutory requirement for awarding bodies to produce certificates and issue these to the candidates will bring

⁴ The registration of qualifications is described in Articles 3 and 4 of the 1992 regulations.

the regulations into line with current digital communications and may help streamline the process and perhaps reduce associated costs.

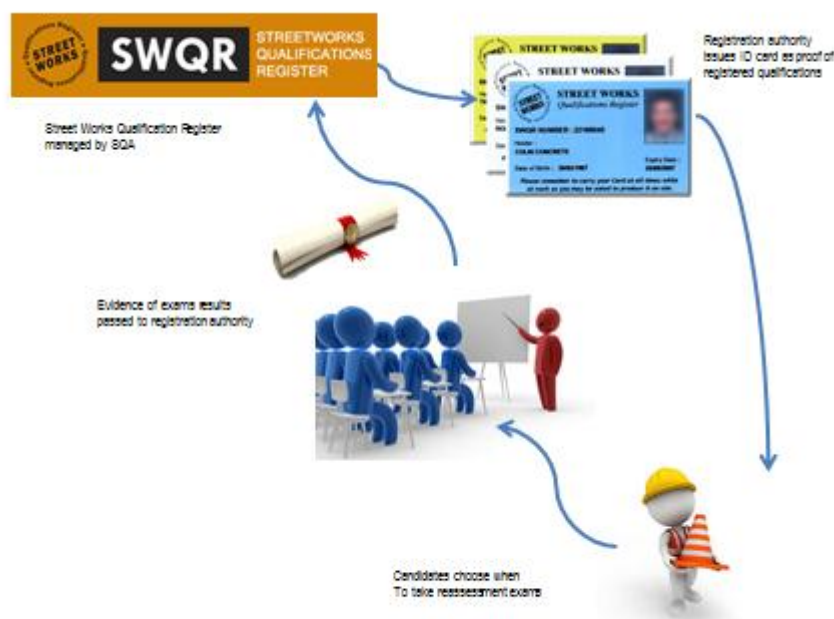


Figure 2 : Registration process

Proposed change 4 – changing the key date from the date a qualification is registered to the date when the relevant qualification is achieved.⁵

The current 5 year period when qualifications are valid is calculated from the date the qualification is registered. This approach is inconsistent with the introduction of reassessment which needs to be more closely linked to when the candidate was assessed as competent. The proposed regulations will therefore seek to use the date on which an awarding body certifies the candidate as being competent as the key date for the calculation of subsequent time periods.

2.9 The proposed regulations, with the introduction of reassessment at their core, are designed to improve confidence in the competence of those conducting and supervising road works in Scotland. Introducing a system where competence is reassessed every 5 years means that it is important to link relevant periods more closely to the date when a candidate was assessed as competent. In order to achieve this the proposed regulations will seek to use the date on which an awarding body certifies the candidate as competent as being the key date. The benefit of using the date a candidate is assessed as competent rather than say, the date of the examination, is that we understand that awarding bodies may not need to change their various business systems to accommodate the proposed change.

⁵ The use of the date of registration to calculate the 5 year period is set out in Article 9 of the 1992 regulations.

Proposed change 5 – so called “grace periods”^{6 7}

The 1992 regulations have been interpreted as providing for two separate so called ‘grace periods’: However only one of these interpretations has any basis in fact.

(a) The 1992 regulations did allow a candidate who has passed their exams to work as someone trained while they wait for their qualification to be registered (for up to 2 months). In the proposed regulations, we will continue to provide a 2 month derogation to avoid delays arising from the administrative process in registering qualifications.

(b) There was also the belief that because the regulations allowed an application to re-register a qualification to be made within 3 months after the expiry of the original period of registration, that this allowed someone to continue to work in a trained position within that 3 month period. This is not in accordance with the 1992 Regulations. Therefore, under the proposed regulations, the registration of any qualification will have an expiry date linked to the date of certification. Once this date of expiration has been reached and if no fresh application to register a qualification has been received, then candidates will not be able to fulfil the statutory role of being a trained operative or supervisor.

2.10 While we have no reason to believe that the registration of qualifications will not be an efficient process, it seems prudent to continue to provide a short period of exemption where someone has passed the relevant exams but has not yet received confirmation that their qualification has been registered. This period will run for no more than 2 months from the date the relevant qualification is confirmed.

2.11 The 1992 regulations allowed applications for re-registration of qualifications to be received up to 3 months after the expiry of the previous 5 year registration period. In practice, this had been incorrectly interpreted as providing cover for a candidate to continue to fulfil the role of either a trained operative or trained supervisor during that period. That view was not correct. The proposed regulations will provide for registration periods that run for 5 years from the date a relevant qualification is confirmed. **To ensure that there is no gap in the period of time that a qualification is registered, relevant applications to re-register qualifications must be received before the expiry date of the previous 5 year period. Applications may be made after the expiry period, but that will result in a gap during which the candidate will not have a registered qualification and will therefore be unable to fulfil the statutory role of being a trained operative or supervisor on road works.**

⁶ The two month derogation while qualifications are being registered is described in Articles 3 and 4 of the 1992 regulations.

⁷ The 3 month window which allowed qualifications to be registered after their expiry is set out in Article 9(2) of the 1992 regulations.

Proposed change 6 – amend the qualification requirements for trained operatives and supervisors within the new regulations to include provision for reassessment

Regulations 3 and 4 of the 1992 regulations set out the prescribed qualifications for trained operatives and supervisors as individuals. This is thought not to be sufficiently robust. When introducing reassessment we need to distinguish between initial training with assessment, and reassessment.

2.12 In introducing reassessment for the first time in Scotland we feel that it is important to differentiate between the process of initial training with assessment, and the process of reassessment, which are generally treated differently in relation to road works and some other vocational training subjects. We propose to treat assessment to mean the process by which an operative or supervisor undergoes a practical and theoretical assessment which demonstrates that they have attained the required level of knowledge and understanding, whereas reassessment need only, we believe, test the relevant theory.

Proposed change 7 – introduction of reassessment of competencies every 5 years ⁸

The 1992 regulations provide that a qualification could be re-registered for a further period of 5 years provided that an application is received no later than 3 months after the expiry of the previous registration. The proposed regulations will require that an application to re-register a qualification is supported with confirmation that the applicant has passed an appropriate reassessment examination in the relevant qualification.

2.13 The introduction of reassessment is aimed at providing greater assurance that trained operatives and supervisors are fully competent on the latest statutory requirements, codes of practice etc.

2.14 **How will reassessment and re-registration work in practice?** - Flexibility will be provided to help candidates and their employers better plan when to take reassessment examinations. When applying to re-register a qualification within 12 months of the expiry of the current registration of their qualification, the expiry of the resultant 5 year registration period will be a full 5 years from the expiry date of their previous registration. This is similar in concept to vehicle MOT certificates where owners can submit their vehicle for a test anytime in the month before their current MOT certificate expires and get a new MOT which runs for a full 12 months from the expiry of the original MOT certificate.

2.15 It is possible that employers, or individual candidates will want to try to arrange for all of their qualifications to expire around the same time. This would have the benefit that the time spent off job taking reassessment examinations can be

⁸ Re-registration of qualifications is described in Article 9(2) of the 1992 regulations.

concentrated into a shorter period. To facilitate this, using the same principles described above, we will provide for applications to re-register qualifications to be submitted within the first 4 years of a registration period. In such circumstances the subsequent registration period will run for a period of 5 years from the next anniversary of the original registration period coming after the date of qualification certification supporting the application.

2.16 When you register a qualification the period of registration will run for 5 years from the date your qualification was certified. The anniversary of that original certification creates virtual milestones throughout the registration period. We will use the next anniversary after any early reassessment to calculate the next 5 year expiry period. In other words :

Time period = (Anniversary date – certified reassessment date) + 5 years.

See the examples below:-

Examples

Examples background – Utility operatives Brian Candidate, and William Operative pass exams for their Signing, Lighting and Guarding qualification for the first time. The associated qualification certificate (or other evidence of the qualification) is dated 16 July 2016 by the awarding body. The registration of these qualifications will therefore expire on 15 July 2021 (see Figure 3 below). However Brian and William plan to take different approaches to reassessment.

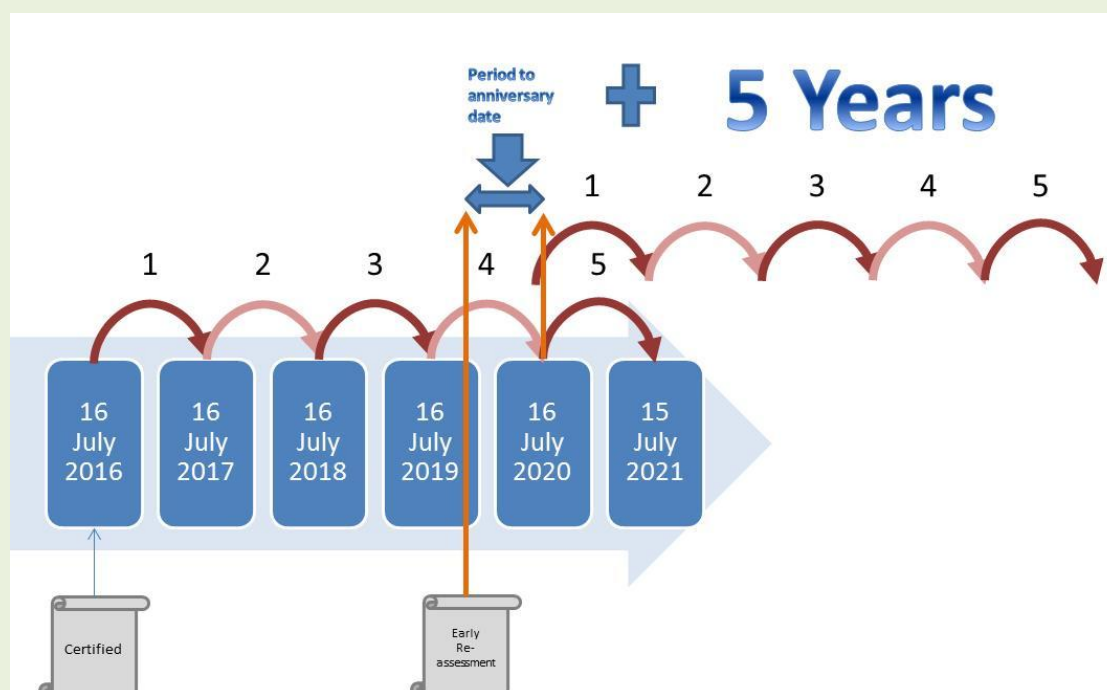


Figure 3 Early reassessment based on example

Brian's approach – Brian plans to take his reassessment exams in the final year of his qualifications' current registration. He makes arrangements to attend an assessment centre on 1 December 2020 (in the 5th year). Assuming he passes and

the awarding body certifies his renewed qualification on 15 December 2020, then when re-registered for a further five years, the renewed registration will expire 5 years from the expiry date of the original registration e.g. on 15 July 2026 as he applied within 12 months of his original expiry date.

William's approach – In 2017 William adds a further road works qualification to his achievements. William's employer decides it will be helpful to try and bring all of the qualifications into some form of alignment by making the registrations expire in the same year. So on 1 May 2017 William attends an assessment centre to be reassessed in his SLG qualification. He passes and the awarding body certifies this result on 16 May 2017.

When registered, the 5 year period for William's SLG qualification will now end on 15 July 2022 (the same year as his other qualification). William and his employer can now plan on concentrating his necessary reassessments within a short period, or on the same day if possible, minimising the work down time.

What William actually did – It started off much as before. In 2017 William adds a further road works qualification to his achievements. William's employer decides it will be helpful to try and bring all of the qualifications into some form of alignment by making the registrations expire in the same year. So on 1 May 2017 William attends an assessment centre to be reassessed in his SLG qualification. He passes and the awarding body certifies this result on 16 May 2017. However, William is a bit absent minded, and he forgets to apply to the approved registration body to re-register his qualification. He eventually gets round to it on 1 September 2018 after a final warning from his employer. When registered, the 5 year period for Williams SLG qualification still ends on 15 July 2022 (i.e. the date it should have expired had he applied to re-register the qualification shortly after his reassessment. William gains no advantage through his absent minded delay.

2.17 We believe that once the registration of a qualification has passed, only a finite period should be allowed as a gap if the candidate wants to apply subsequently to re-register that qualification on the basis that he has passed only a reassessment examination rather than taken the qualification again in the same way a new candidate would have to do. We believe that setting an upper limit of a gap of no more than 5 years is appropriate. This proposal strikes a balance between providing candidates and their employers with flexibility, and at the same time providing a safeguard to ensure that high standards of competence are maintained within road workers and their supervisors.

Proposed change 8 – revised qualification structure ⁹

The 1992 regulations prescribe qualifications for operatives and supervisors that are made up of separately defined units of competence. The proposed regulations seek to revise this structure, making *Location and avoidance of underground apparatus*, and *Signing, Lighting and Guarding* mandatory qualifications in their own right and not to have expired for any other qualification to be deemed valid.

2.18 Under the 1992 regulations, with the exception of the stand-alone arrangements for *Signing, Lighting and Guarding* (for operatives whose actions only involve opening the road e.g. meter reading, lifting inspection covers, etc.), each qualification comprises at least three units, two of which - *Location and avoidance of underground apparatus* (LA), and *Signing, Lighting and Guarding* (SLG) - are common to all.

2.19 This ensures that for all works that involve breaking up the road, the operative is trained in LA and SLG. However, the prescribed combinations mean that there is some duplication of units among the qualifications, which can cause confusion over which units to re-register when renewing qualifications. The composition of units can also be confusing to roads authority inspectors.

2.20 The proposed regulations aim to make it easier for practitioners to comply with the guiding principles of the regulations whilst ensuring that appropriate standards of training are maintained. The intention is to make the qualifications structure clearer and more logical. The expected outcomes are that practitioners will better understand what is expected of them, and road works operatives and supervisors will be more likely to be appropriately trained for the activities they are engaged in.

2.21 Under the proposed regulations, LA and SLG would become qualifications in their own right and a mandatory requirement for any other qualification to be valid. **Should either LA or SLG expire, the other qualifications would all become temporarily invalid until the expired key qualification was renewed.** We consider that this approach puts two key principles at the heart of road work qualifications, the safety of road workers, users and pedestrians, and the protection of plant.

2.22 Currently, an operative whose actions only involve opening the road such as meter reading, lifting inspection covers, etc. needs no qualification other than SLG. This would remain the case under the proposed amendments.

2.23 The proposed amendments would also make it easier for local authority inspectors to verify that people with the correct skills are on site, as the mandatory units will be recorded separately on the Street Works Card produced by the approved register.

⁹ The qualifications and associated units of competence are set out in Schedules 1-4 of the 1992 regulations.

2.24 The proposed regulations require no changes to the content of training units and therefore we do not anticipate that significant changes to training will be required. The new qualifications would be fully compatible with existing units of competence. During the transition, operatives and supervisors should be able to seamlessly transfer to the new qualifications as their old ones expire. This compatibility would also mean there is a clear correlation between the proposed qualifications in Scotland and elsewhere in the UK.

Cross-border Recognition

Proposed change 9 – cross-border recognition of road works qualifications
<p>There is a need to recognise road work qualifications registered :</p> <ul style="list-style-type: none">a) elsewhere in the UK (in England, Wales and Northern Ireland); andb) elsewhere in the European Union.

2.25 The proposed regulations, along with regimes in the other parts of the UK are underpinned by sector involvement in the development and maintenance of training course materials. This helps ensure that all road works operatives and supervisors hold equivalent qualifications regardless of where within the UK they undertake their road works training or qualifications.

2.26 This common regime will allow Roads Authority inspectors to recognise qualifications as being equivalent.

2.27 Operatives and supervisors from other parts of the UK who have held their qualifications for more than 5 years and not undergone reassessment shall only have those qualifications recognised provided they have undergone reassessment prior to undertaking road works within Scotland.

2.28 The proposed instrument will also provide for recognition of equivalent EU qualifications, as well as cross-border provisions within the UK, and continued recognition of current Scottish and other UK qualifications while these transition to new arrangements. Individuals from the EU wishing to operate as a trained road works operative or supervisor must show that they have evidence of equivalent qualifications attained in their own country, or that they have completed an adaptation period and a successful assessment (see regulation 29(1)a and 32(1), of the European Union (Recognition of Professional Qualifications) Regulations 2015.

Proposed Change 10– Scottish Fire and Rescue Service exemption

Introduce an explicit exemption from the regulations for Scottish Fire and Rescue Service when checking fire hydrants only.

2.29 There is some confusion over the applicability (and the appropriateness) of these regulations with regard to the Scottish Fire and Rescue Service when they are carrying out fire hydrant checks in the road.

2.30 The 1992 regulations could be interpreted as to require that Scottish Fire and Rescue Service staff performing hydrant checks would need a relevant SLG qualification. To remove any doubt, it is proposed to explicitly exempt the Scottish Fire and Rescue Service from having to comply with the regulations when checking fire hydrants, **however it should be noted that those carrying out repairs to faulty fire hydrants must comply with the regulations.**

Supplementary questions – Possible future extension of some qualification requirements to roads authorities and a new module on communication with members of the public

The proposed regulations seek to make those qualifications that relate to safety and plant protection mandatory. Although NOT part of these regulations, we would like to take this opportunity to take soundings on whether it would also make sense to extend these mandatory qualifications in the same way to Roads Authority operatives and supervisors, in a scenario where the Safety at Street Works and Road Works code of practice (the so called “red book”) is made applicable to Roads Authority road workers.

In the same way, we would also be interested in hearing views on whether the curriculum for Signing Lighting and Guarding should be adapted to include an element or module on how best to engage and communicate with members of the public with whom they come into contact with during the undertaking of road works.

Annex A: proposed new qualification structure

Reference No.	Proposed new Qualifications for Operatives
LA	Location and avoidance of underground apparatus
01	Signing, lighting and guarding
02	Excavation in the road
03	Reinstatement and compaction of backfill materials
04	Reinstatement of sub-base and base in non-bituminous materials
05	Reinstatement in cold-lay bituminous materials
06	Reinstatement in hot-lay bituminous materials
07	Reinstatement of concrete slabs
08	Reinstatement of modular surfaces and concrete footways

Alternative Unit Structure for Supervisors

Reference No.	Proposed Qualifications for Supervisors
LA	Location and avoidance of underground apparatus
S1	Monitoring Signing lighting and guarding
S2	Monitoring excavation in the road
S3	Monitoring reinstatement and compaction of backfill materials
S4	Monitoring reinstatement of sub-base and base in non-bituminous materials
S5	Monitoring reinstatement in bituminous materials
S6	Monitoring reinstatement of concrete slabs
S7	Monitoring reinstatement of modular surfaces and concrete footways

Annex B: Full list of consultation questions

Responses are invited from any individual or body although we anticipate that this consultation will be of most interest to Scottish Local Authorities and those who carry out road works in Scotland and throughout the UK.

These questions should be considered in conjunction with Scottish Statutory Instrument SSI 1992 No 1675 *The Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 1992*, and Annex A of this document - *Proposed new qualifications structure*.

The questions have been grouped so that those in each box relate to a particular area of the regulations we are seeking to change. You are invited to comment particularly where you disagree with any of the proposals, but all comments are welcome.

Please state whether you are responding as an individual or as a member of an organisation. If the latter, please state the organisation on whose behalf you are responding. If responding on behalf of a larger organisation, please make it clear what the organisation represents and, where applicable, how the views of members were assembled.

Proposed change 1 – change the order in which the sections on supervisors and operatives appear in the regulations.	
a)	Place operatives before supervisors in the title of the Road Works (Qualifications of Operatives and Supervisors)(Scotland) Regulations 2016; and
b)	within the body of the regulations and associated schedules.
See paragraph 2.3	
Q1. Do you agree with the proposed change of ordering in the title and within the regulations?	
Response :	
Yes/No/ Don't know	<input type="text"/>
We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.	
Comments:	
Please quantify the potential costs or benefits you think that this proposed change may have on your business with regard to, for example :	
<ul style="list-style-type: none"> the day to day running of your business, e.g. economic growth or limitations; the positive or negative financial or administrative burden or benefits. 	

Comments:

Proposed change 2 – changing the way Approved Bodies are defined.

We propose to make it clearer through these regulations and associated, how other organisations can be recognised by the Scottish Ministers and added to the list of approved bodies in Scotland.

See paragraphs 2.4 – 2.5

Q2a. Do you agree with the process described in paragraphs 2.4 – 2.5 to allow the Scottish Ministers to recognise Awarding Bodies?

Response :

Yes/No/ Don't know	
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We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Please quantify the potential costs or benefits you think that this proposed change may have on your business with regard to, for example :

- the day to day running of your business, e.g. economic growth or limitations;
- the positive or negative financial or administrative burden or benefits.

Comments:

Q2b. In helping the Scottish Ministers to reach a view we propose to consult with RAUC(S), SQA Accreditation, the Scottish Road Works Commissioner and HAUC(UK). Are there any other organisations you consider it would be helpful for the Scottish Ministers to consult ?

Response:

Yes/No/ Don't know	
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We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please provide the name of potential consultees, and explain the reasons behind your proposal.

Comments:

Proposed change 3 – simplify the process of registering qualifications.

The 1992 regulations envisage a process where the candidate is assessed as competent by an Approved Assessment Centre, which then provides the information to the Approved Register. The Awarding Body then issues a certificate to the candidate. The Approved Register then records the qualifications and issues a Street Works card to the candidate. The proposed regulations will seek to simplify this process by providing for electronic communication of examination results and qualifications held.

See paragraphs 2.6 - 2.8

Q3. Do you agree that the proposal to simplify the process for recording and registering qualifications will improve on the current system?

Response :

Yes/No/ Don't know	
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We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Please quantify the potential costs or benefits you think that this proposed change may have on your business with regard to, for example :

- the day to day running of your business, e.g. economic growth or limitations;
- the positive or negative financial or administrative burden or benefits.

Comments:

Proposed change 4 – changing the key date from the date a qualification is registered to the date when the relevant qualification is achieved.

The current 5 year period when qualifications are valid is calculated from the date that qualification is registered. The proposed regulations will seek to use the date on which an awarding body certifies the candidate as being competent as the key date for the calculation of subsequent time periods.

See paragraph 2.9

Q4. Do you agree that the proposed change clarifies when the expiry dates of the registration of qualifications will fall?

Response :

Yes/No/	
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Don't know	
<p>We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.</p> <p>Comments:</p>	
<p>Please quantify the potential costs or benefits you think that this proposed change may have on your business with regard to, for example :</p> <ul style="list-style-type: none"> • the day to day running of your business, e.g. economic growth or limitations; • the positive or negative financial or administrative burden or benefits. <p>Comments:</p>	

Proposed change 5 – so called “grace periods”.	
<p>The 1992 regulations have been interpreted as providing for two separate so called ‘grace periods’: However only one of these interpretations has any basis in fact.</p> <p>(a) The 1992 regulations did allow a candidate who has passed their exams to work as someone trained while they wait for their qualification to be registered (for up to 2 months). In the proposed regulations, we will continue to provide a 2 month exemption to avoid delays arising from the administrative process in registering qualifications; and</p> <p>(b) A practice not in accordance with the 1992 regulations was the belief that because the regulations allowed an application to re-register a qualification to be made within 3 months of the expiry of the original period of registration, that this allowed someone to continue to work in a trained position within that 3 month period. Under the proposed regulations, the registration of any qualification will have an expiry date linked to the date of certification. Once this date of expiration has been reached and if no fresh application to register a qualification has been received, then candidates will not be able to fulfil the statutory role of being a trained operative or supervisor.</p>	
See paragraphs 2.10 and 2.11	
<p>Q5a. Do you agree that we should continue to provide a two month ‘grace period’ during which someone who has passed their exams can fulfil the statutory role of a trained operative or supervisor even though they have not yet received confirmation of the successful registration of their qualification?</p> <p>Response :</p>	
Yes/No/	

Don't know	
------------	--

We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Q5b. Do you agree with our proposal to clarify that candidates are not able to fulfil the statutory role of a trained operative or supervisor once the registration of their qualification has expired ?

Response:

Yes/No/ Don't know	
-----------------------	--

We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Please quantify the potential costs or benefits you think that these proposed changes may have on your business with regard to, for example :

- the day to day running of your business, e.g. economic growth or limitations;
- the positive or negative financial or administrative burden or benefits.

Comments:

Proposed change 6– Amend the qualification requirements for an operative and a supervisor within the new regulations to include provision for reassessment
Regulations 3 and 4 of the 1992 regulations set out the qualification requirements for an operative and supervisor as an individual who holds a certificate in certain prescribed units. This is thought not to be sufficiently robust. When introducing reassessment we need to distinguish between initial training with an assessment and the process of being reassessed.
See paragraph 2.12
Q6. Do you agree that our proposal to amend the qualification requirements for trained operatives and supervisors to reflect reassessment is relevant and appropriate?
Response :
Yes/No/

Don't know	
------------	--

We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Proposed change 7– introduction of reassessment of competencies every 5 years.

The 1992 regulations provide that a qualification could be re-registered for a further period of 5 years provided that an application is received no later than 3 months after the expiry of the previous registration. The proposed regulations will require that an application to re-register a qualification is supported with confirmation that the applicant has passed an appropriate reassessment examination in the relevant qualification. We will also allow flexibility for those who wish to take their reassessment early.

See paragraphs 2.13 - 2.17

Q7a. Do you agree that candidates should only be allowed to re-register qualifications if they have passed an appropriate reassessment examination in that qualification?

Response :

Yes/No/ Don't know	
-----------------------	--

We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Q7b. Do agree that our proposal to allow early applications to re-register qualifications provides candidates and employers with greater flexibility to plan when and how they candidates will take their reassessment examinations?

Response :

Yes/No/ Don't know	
-----------------------	--

We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Q7c. Do you agree that that the maximum gap that should be allowed between the

lapsed registration of a qualification and an application to re-register that qualification on the basis of a reassessment examination should be 5 years?

Response :

Yes/No/ Don't know	
-----------------------	--

We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Please quantify the potential costs or benefits you think that these proposed changes may: have on your business with regard to, for example :

- the day to day running of your business, e.g. economic growth or limitations;
- the positive or negative financial or administrative burden or benefits.

Comments:

Proposed change 8 – revising qualification structure.

The 1992 regulations prescribe qualifications for operatives and supervisors that are made up of separately defined units of competence. The proposed regulations seek to revise and clarify this structure.

- Revise the system of units and qualifications (see Annex A).
- Make "Signing, lighting and guarding" and "Location and avoidance of underground apparatus" qualifications in their own right, making these qualifications live in-date registrations a requirement for any other qualification to be valid.

See paragraphs 2.18 - 2.24

Q8a. Do you consider that our proposal to revise and clarify the system of units and qualifications in the manner described at Annex A is a more straightforward way for the qualifications to be listed?

Response :

Yes/No/ Don't know	
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We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Q8b. Do you consider our proposal to make “Signing, Lighting and Guarding” and “Location and Avoidance of Underground Apparatus” qualifications in their own right and a mandatory requirement for any other qualification to help promote safety and plant protection to be logical and appropriate?

Response:

Yes/No/ Don't know	
-----------------------	--

We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Please quantify the potential costs or benefits you think that these proposed changes may have on your business with regard to, for example :

- the day to day running of your business, e.g. economic growth or limitations;
- the positive or negative financial or administrative burden or benefits.

Comments:

Proposed change 9– Cross-border recognition of road works qualifications

There is a need to recognise road work qualifications registered :

- elsewhere in the UK (England, Wales and Northern Ireland); and
- elsewhere in the European Union.

See paragraph 2.25 – 2.28

Q9. Do you agree that this is required, or have any concerns about the proposal?

Response :

Yes/No/ Don't know	
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We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Please quantify the potential costs or benefits you think that this proposed change may have on your business with regard to, for example :

- the day to day running of your business, e.g. economic growth or limitations;
- the positive or negative financial or administrative burden or benefits.

Comments:

Proposed change 10 – Scottish Fire and Rescue Services exemption.

Introduce an explicit exemption from the regulations for Scottish Fire and Rescue Services when checking fire hydrants.

See paragraph 2.29 – 2.30

Q10. Do you consider our proposal to introduce an explicit exemption from the regulations for Scottish Fire and Rescue Services to be appropriate?

Response :

Yes/No/ Don't know	
-----------------------	--

We welcome your comments on whether you consider that our proposals above are appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Please quantify the potential costs or benefits you think that this proposed change may have on your business with regard to, for example :

- the day to day running of your business, e.g. economic growth or limitations;
- the positive or negative financial or administrative burden or benefits.

Comments:

Supplementary question – Possible future extension of some qualification requirements to roads authorities

The proposed regulations seek to make those qualifications that relate to safety and plant protection mandatory. Although NOT part of these regulations, we would

like to take this opportunity to take soundings on whether it would also make sense to extend these mandatory qualifications in the same way to Roads Authority operatives and supervisors. In a scenario where the so called “red book” is applied to Road Authority road workers.

In the same way, we would also be interested in hearing views on whether the curriculum for Signing Lighting and Guarding should be adapted to include an element or module on how best to engage and communicate with members of the public with whom they come into contact with during the undertaking of road works

Q11(a). Do you consider it to be a good idea to extend the requirement for certain qualifications to roads authority operatives and supervisors?

Response :

Yes/No/ Don't know	
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We welcome your comments on whether you consider that these proposals would be appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Please quantify the potential costs or benefits you think that this proposed change may have on your business with regard to, for example :

- the day to day running of your business, e.g. economic growth or limitations;
- the positive or negative financial or administrative burden or benefits.

Comments:

Q11(b). Do you consider it to be a good idea to add content to Signing Lighting and Guarding on how best to engage and communicate with members of the public with whom they come into contact with during the undertaking of road works?

Response :

Yes/No/ Don't know	
-----------------------	--

We welcome your comments on whether you consider that these proposals would be appropriate and relevant. Please explain the reasons behind your answer.

Comments:

Annex C: The Road Works (Qualifications of Supervisors and Operatives)(Scotland) Regulations 1992

Made

14th July 1992

Laid before Parliament

15th July 1992

Coming into force

5th August 1992

The Secretary of State, in exercise of the powers conferred on him by sections 126 and 163(1) of the New Roads and Street Works Act 1991([1](#)), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

1. These Regulations may be cited as the Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 1992 and shall come into force on 5th August 1992.

2.—(1) In these Regulations—

“the Act” means the New Roads and Street Works Act 1991;

“approved assessment centre” means an establishment approved by an approved body for the purposes of assessing achievement of units of competence;

“approved body” means a body mentioned in regulation 5;

“approved register” means the register mentioned in regulation 5;

“certificate of competence” means a qualification, award or an equivalent thereto granted by an approved body;

“supervisor” means a person by whom road works are required to be supervised under section 126(1) of the Act;

“trained operative” means a person whose presence at the site of road works is required under section 126(2) of the Act;

“unit of competence” means one of the areas of competence set out in Schedules 1 or 3 hereto and “unit” shall be construed accordingly;

(2) A reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations.

3.—(1) A supervisor has a prescribed qualification for a particular type of supervisory work if—

(a) an approved body has issued him with a certificate of competence showing that he has been assessed by an approved assessment centre as having achieved the relevant unit of competence as set out in Schedules 3 and 4 hereto and that certificate is registered in an approved register; or

(b) he has obtained a qualification of another member state of the European Community which gives an equivalent guarantee of skill and competence to that given by the certificate of competence as required by sub-paragraph (a) above,

provided that, for a period of two months beginning with the day on which he is assessed as having achieved the requisite unit of competence, a supervisor shall be treated as having a prescribed qualification for that type of supervisory work, notwithstanding that an approved body has not issued him with a certificate of competence or that the certificate issued to him has not been registered as required by sub-paragraph (a) above.

(2) A supervisor shall not require a prescribed qualification for supervising the replacement of poles, lamps, columns and signs, pole testing or similar works involving minimal breaking up of the road.

4.—(1) A trained operative has a prescribed qualification for a particular type of work if—

(a) an approved body has issued him with a certificate of competence showing that he has been assessed by an approved assessment centre as having achieved the relevant unit of competence as set out in Schedules 1 and 2 hereto and that certificate is registered in an approved register; or

(b) he has obtained a qualification of another member state of the European Community which gives an equivalent guarantee of skill and competence to that given by the certificate of competence as required by sub-paragraph (a) above,

provided that, for a period of two months beginning with the day on which he is assessed as having achieved the requisite unit of competence, a trained operative shall be treated as having a prescribed qualification for that type of work, notwithstanding that an approved body has not issued him with a certificate of competence or that the certificate issued to him has not been registered as required by sub-paragraph (a) above.

(2) If the works do not involve breaking up the road or are works only of the type referred to in regulation 3(2), a trained operative has a prescribed qualification if he has achieved the unit of competence set out as unit 2 in Schedule 1 hereto.

5.—(1) The bodies approved for the purpose of issuing the certificates mentioned in regulations 3 and 4 are:—

The City and Guilds of London Institute,

The Scottish Vocational Education Council, and

The Certification and Assessment Board for the Water Industry.

(2) The register approved for the purpose of registering certificates mentioned in regulations 3 and 4 is the register to be kept by the Scottish Vocational Education Council as the registration body approved for the purpose by the Secretary of State.

(3) Where an approved body has issued a certificate of competence to a supervisor or a trained operative (as the case may be) it shall within one month thereof register that certificate in the approved register.

(4) The Secretary of State may withdraw any approval given by paragraph (1) or (2) of this regulation if he is satisfied that the body to whom the approval is given has failed satisfactorily to discharge the function of certification or registration under any of the provisions of these Regulations.

6.—(1) For a period of 2 years starting on 5th August 1992 a person may act as a supervisor without having a prescribed qualification.

(2) For a period of 5 years starting on 5th August 1992 a person may act as a trained operative without having a prescribed qualification.

7. A prescribed qualification for a supervisor may relate to all types of work which may fall to be done by a supervisor, or may be restricted to some types of that work and the requirements of section 126 of the Act shall be deemed to be satisfied only in relation to the types of work to which that qualification relates.

8. A prescribed qualification for a trained operative may relate to all types of work which may fall to be done by a trained operative, or may be restricted to some types of that work and the requirements of section 126 of the Act shall be deemed to be satisfied only in relation to the types of work to which that qualification relates.

9.—(1) A certificate mentioned in regulation 3 or regulation 4 shall cease to be registered on the expiry of 5 years from the date of registration.

(2) A certificate may be registered for further successive periods of five years provided that an application for registration is received by the registration body no later than three months after the expiry of the previous registration.

James Douglas-Hamilton

Parliamentary Under Secretary of State, Scottish Office

St. Andrew's House,

Edinburgh

14th July 1992

Regulations 2(1) and 4(1) and (2)

SCHEDULE 1 UNITS OF COMPETENCE FOR TRAINED OPERATIVES

Unit 1 Location and avoidance of underground apparatus

Unit 2 Signing, lighting and guarding

Unit 3 Excavation in the road

Unit 4 Reinstatement and compaction of backfill materials

Unit 5 Reinstatement of sub-base and roadbase in non-bituminous materials

Unit 6 Reinstatement in cold-lay bituminous materials

Unit 7 Reinstatement in hot-lay bituminous materials

Unit 8 Reinstatement of concrete slabs

Unit 9 Reinstatement of modular surfaces and concrete footways

Regulation 4(1)

SCHEDULE 2 QUALIFICATIONS FOR TRAINED OPERATIVES

Type of Work	Units of competence required
1. Excavation in the road	Units 1, 2 and 3
2. Excavation, backfilling and reinstatement of construction layers with a cold-lay bituminous surface	Units 1, 2, 3, 4, 5 and 6
3. Reinstatement of construction layers in hot-lay and cold-lay bituminous materials	Units 1, 2, 6 and 7
4. Reinstatement of concrete slabs	Units 1, 2 and 8
5. Reinstatement of modular surfaces and concrete footways	Units 1, 2 and 9

Regulations 2(1) and 3(1)

SCHEDULE 3 UNITS OF COMPETENCE FOR SUPERVISORS

Unit 1	Location and avoidance of underground apparatus
Unit 10	Monitoring signing, lighting and guarding
Unit 11	Monitoring excavation in the road
Unit 12	Monitoring reinstatement and compaction of backfill materials
Unit 13	Monitoring reinstatement of sub-base and roadbase in non-bituminous materials
Unit 14	Monitoring reinstatement in bituminous materials
Unit 15	Monitoring reinstatement of concrete slabs
Unit 16	Monitoring reinstatement of modular surfaces and concrete footways

Regulation 3(1)

SCHEDULE 4 QUALIFICATIONS FOR SUPERVISORS

Type of Supervisory Work	Units of competence required
1. Monitoring excavation in the road	Units 1, 10 and 11
2. Monitoring excavation, backfilling and reinstatement of construction layers with bituminous materials	Units 1, 10, 11, 12, 13 and 14
3. Monitoring reinstatement of construction layers in bituminous materials	Units 1, 10 and 14
4. Monitoring reinstatement of concrete slabs	Units 1, 10 and 15
5. Monitoring reinstatement of modular surfaces and concrete footways	Units 1, 10 and 16

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the qualifications needed for supervisors (regulation 3) and trained operatives (regulation 4), one of each of whom is required by section 126(1) and (2) of the New Roads and Street Works Act 1991 (subject to exceptions) to supervise or be on site at all times when an undertaker executes road works involving, in the case of both supervisors and trained operatives, breaking up the road, or any sewer, drain, or tunnel under it, or tunnelling or boring under the road and, in the case of trained operatives, opening the road.

A supervisor or a trained operative has a prescribed qualification if an approved body has issued him with a certificate of competence showing that he has been assessed as having achieved the relevant units of competence for the work being executed as set out in Schedules 1 and 2 (operatives) and Schedules 3 and 4 (supervisors). Provision is made for the recognition of equivalent qualifications obtained in another member state of the European Community (regulations 3(1)(b) and 4(1)(b)). Regulation 5 prescribes the City and Guilds of London Institute, the Scottish Vocational Education Council ("SCOTVEC") and the Certification and Assessment Board for the Water Industry as the approved bodies for the issuing of certificates of competence and provides that SCOTVEC is the approved registration body to keep the register of certificates. Regulation 5(4) provides that the Secretary of State may withdraw approval from a named body if it fails satisfactorily to discharge its functions.

Regulation 6 makes transitional provisions and regulation 7 and 8 provide that prescribed qualifications may relate to all or any types of work to be done by a supervisor or trained operative. Finally, regulation 9 provides that a certificate expires after 5 years, but may be re-registered.

(1)

[1991 c. 22.](#)

Annex D: Respondent Information Form

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ *Please tick as appropriate*

Surname

Forename

2. Postal Address

Postcode	Phone	Email

3. Permissions - I am responding as...

Individual	/	Group/Organisation
<input type="checkbox"/>	Please tick as appropriate	<input type="checkbox"/>

(a) Do you agree to your response being made available to the public? (on the Scottish Government Consultation Hub)

Please tick as appropriate

☐ Yes ☐ No

(c) Do you agree to your organisation's **details** and **response** being made available to the public? (on the Scottish Government Consultation Hub)

(b) If you answered yes, please select an option below.

Please tick ONE of the following boxes

Please tick as appropriate

☐ Yes, publish my response and details

☐ No, do not publish my response

Yes, make my response and name all available

☐

or

Yes, make my response available without my name (anonymously)

☐

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate ☐ Yes ☐ No



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