STATUTORY INSTRUMENTS

2016 No. 1147

HIGHWAYS, ENGLAND

The Street Works (Qualifications of Operatives and Supervisors) (England) Regulations 2016

Made - - - -	*24th November 2016*
Laid before Parliament	*30th November 2016*
Coming into force - -	*6th April 2017*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 67 and 104(1) of the New Roads and Street Works Act 1991(**1**).

Citation, application and commencement

1. These Regulations—

(a) may be cited as the Street Works (Qualifications of Operatives and Supervisors) (England) Regulations 2016;

(b) apply in respect of street works in England; and

(c) come into force on 6th April 2017.

Interpretation

2.—(1) In these Regulations—

"the 2009 Regulations" means the Street Works (Qualifications of Supervisors and Operatives) (England) Regulations 2009(**2**);

"the 2015 Regulations" means the European Union (Recognition of Professional Qualifications) Regulations 2015(**3**);

"the Act" means the New Roads and Street Works Act 1991;

"adaptation period" has the meaning given to it in regulation 30 of the 2015 Regulations;

"approved assessment centre" means an establishment approved by an approved body for the purpose of assessing competence in the types of work which fall to be done by a trained operative or supervisor;

(**1**) 1991 c.22.
(**2**) S.I. 2009/2257.
(**3**) S.I. 2015/2059.

"approved body" has the meaning given to it by regulation 8(1);

"approved register" means the register mentioned in regulation 8(2);

"aptitude test" has the meaning given to it in regulation 31 of the 2015 Regulations;

"certificate" means a certificate of competence or certificate of recognition (except where the reference is to a renewal certificate);

"certificate of competence" means a qualification, award or an equivalent which is granted by an approved body;

"certificate of recognition" means a certificate issued in pursuance of regulation 3(3)(b) or (c);

"competent authority" means a relevant competent authority for the United Kingdom for regulating Road/Street Works Operatives and Road/Street Works Supervisors as named in Part 1 of Schedule 1 to the 2015 Regulations;

"registration body" means the Scottish Qualifications Authority;

"renewal certificate" means a certificate issued in pursuance of regulation 13;

"supervisor" means a person by whom street works are required to be supervised under section 67(1) of the Act; and

"trained operative" means a person whose presence at the site of street works is required under section 67(2) of the Act.

(2) For the purposes of these Regulations, a person has been—

(a) assessed as having the required level of competence in a type of work if that person has passed a practical and theoretical assessment designed to demonstrate attainment of the required level of knowledge and understanding of, and skill in, that type of work; and

(b) reassessed as having the required level of competence in a type of work if that person has passed a theoretical assessment designed to demonstrate that the required level of knowledge and understanding of that type of work has been retained and kept up to date since the previous assessment or reassessment.

Prescribed qualifications

3.—(1) A person has a prescribed qualification as a trained operative for a type of work (T) listed in Schedule 1, if that person is qualified in—

(a) T; and

(b) the following additional types of work—

(i) signing, lighting and guarding, and

(ii) location and avoidance of underground apparatus.

(2) A person has a prescribed qualification as a supervisor for a type of work (S) listed in Schedule 2, if that person is qualified in—

(a) S; and

(b) the following additional types of work—

(i) monitoring, signing, lighting and guarding, and

(ii) location and avoidance of underground apparatus.

(3) For the purposes of paragraphs (1) and (2), a person is qualified in a type of work if, in respect of that work—

(a) an approved body has issued a certificate of competence showing that the person has been assessed by an approved assessment centre as having the required level of competence;

(b) a competent authority has issued a certificate of recognition stating that the person meets the requirements of regulation 29(1)(a) or (b) (conditions for recognition of qualification in a relevant State) of the 2015 Regulations; or

(c) a competent authority has issued a certificate of recognition stating that the person has completed an adaptation period of up to three years with a successful assessment or has taken and passed an aptitude test, as described in regulation 32(1) (conditions for compensation measures) of the 2015 Regulations(**4**),

and the certificate is registered in the approved register.

Grace period before registration

4. For a period of two months beginning with the day on which a person is awarded a certificate (including a renewal certificate) for a type of work, that person is deemed to be qualified in that type of work notwithstanding that the relevant certificate has not been registered or re-registered (as the case may be) in the approved register.

Prescribed qualifications: UK equivalents

5.—(1) A person has a prescribed qualification for a type of work listed in Schedule 1 or 2 if the person has an equivalent qualification in respect of that type of work which is recognised in another part of the United Kingdom.

(2) For the purposes of paragraph (1)—

(a) a person has an equivalent qualification in respect of a type of work if it has been approved as such by a competent authority; and

(b) the qualification is recognised in another part of the United Kingdom if—

(i) in relation to Wales, it is prescribed by regulations made under sections 67 and 104(1) of the Act which apply in respect of street works in Wales,

(ii) in relation to Scotland, it is prescribed by regulations made under sections 126 and 163(1) of the Act, or

(iii) in relation to Northern Ireland, it is prescribed by regulations made under article 27 of the Street Works (Northern Ireland) Order 1995(**5**).

Restrictions on qualifications

6. A prescribed qualification may relate to all types of work listed in Schedule 1 or 2 which may fall to be done by a trained operative or supervisor or may be restricted to some of them, and the requirements of section 67 of the Act are deemed to be satisfied only in relation to the types of work to which that qualification relates.

Freedom to provide services on a temporary basis

7.—(1) Nothing in regulations 3 to 6 affects an applicant's freedom to provide the services of a trained operative or a supervisor on a temporary or casual basis in accordance with Part 2 (freedom to provide services on a temporary and occasional basis) of the 2015 Regulations.

(2) In this regulation "applicant" has the same meaning as in the 2015 Regulations.

(**4**) "Adaptation period" and "aptitude test" are defined respectively in regulations 30 and 31 (Compensation measures – adaptation periods and aptitude tests) of the 2015 Regulations.
(**5**) S.I. 1995/3210.

Qualification registration

8.—(1) The bodies approved for the purpose of issuing certificates of competence are those bodies that have been formally recognised for that purpose in accordance with the rules and criteria set out in sections 132 and 133 of the Apprenticeships, Skills, Children and Learning Act 2009(**6**).

(2) The register approved for the purpose of registering certificates is the register kept by the registration body.

(3) Where an approved body has issued a certificate of competence, the relevant approved assessment centre must within one month request the registration body to register that certificate in the approved register.

(4) Where an approved body has issued a renewal certificate, the relevant approved assessment centre must within one month request the registration body to re-register in the approved register the certificate to which it relates.

(5) The registration body must register or re-register (as the case may be) a certificate within one month of the following—

(a) receipt of a request for registration made under paragraph (3);

(b) the issue by a competent authority of a certificate of recognition in accordance with regulation 3(3)(b) or (c); or

(c) receipt of a request for re-registration made under paragraph (4).

Expiry of registration

9. A certificate ceases to be registered at the end of the period of five years beginning with the day on which it was issued, but a certificate may be re-registered for any number of further periods in accordance with regulations 10 to 12.

Re-registration more than 12 months before expiry

10.—(1) A certificate issued in respect of a type of work may be re-registered for a further period of five years if—

(a) an approved body has awarded the holder of the certificate with a renewal certificate for that type of work; and

(b) the renewal certificate is issued earlier than 48 months before the expiry of the previous registration.

(2) A certificate issued in respect of a type of work may be re-registered for a further period of six years if—

(a) an approved body has awarded the holder of the certificate with a renewal certificate for that type of work; and

(b) the renewal certificate is issued earlier than 12 months (but no earlier than 48 months) before the expiry of the previous registration.

(3) The further period for which a certificate is registered under this regulation begins on the day on which the renewal certificate is issued.

Re-registration within 12 months of expiry

11.—(1) A certificate issued in respect of a type of work may be re-registered for a further period of five years if—

(**6**) 2009 c.22.

(a) an approved body has awarded the holder of the certificate with a renewal certificate for that type of work; and

(b) the renewal certificate is issued within the period of 12 months ending on the day of expiry of the previous registration.

(2) The further period for which a certificate is registered under this regulation begins on the day after the expiry of the previous registration.

Re-registration after expiry

12.—(1) A certificate issued in respect of a type of work may be re-registered for a further period of five years if—

(a) an approved body has awarded the holder of the certificate with a renewal certificate for that type of work; and

(b) the renewal certificate is issued within the period of five years beginning with the day after the expiry of the previous registration.

(2) The further period for which a certificate is registered under this regulation begins on the day on which the renewal certificate is issued.

Renewal certificates

13. An approved body may award a person with a renewal certificate for a type of work if that person has been assessed or reassessed by an approved assessment centre as having the required level of competence in that type of work.

Exemption for fire and rescue authorities

14.—(1) This regulation applies where a fire and rescue authority is executing street works which do not involve—

(a) breaking up the street, or any sewer, drain or tunnel under it; or

(b) tunnelling or boring under the street.

(2) The duty under section 67(2) of the Act (to secure that there is on site at all times when works are in progress at least one person having a prescribed qualification as a trained operative) does not apply in relation to those works.

(3) In this regulation "fire and rescue authority" means a fire and rescue authority under the Fire and Rescue Service Act 2004(**7**).

Validity of certificates obtained under the 2009 Regulations

15.—(1) This regulation applies where, immediately before the commencement date—

(a) a person (P) held a certificate of competence (C) in a type of work mentioned in column 1 of Schedule 3; and

(b) C was registered in the approved register (either as a first registration or as a result of re-registration).

(2) P is deemed to hold certificates of competence in the types of work mentioned in the corresponding entry in column 2 of Schedule 3.

(3) Those certificates—

(**7**) 2004 c.21.