
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the reinstatement quality plans (“the plans”) to be entered into the Scottish Road Works Register (“the SRWR”) under section 130A or 130B of the New Roads and Street Works Act 1991 (“the 1991 Act”).

These Regulations also prescribe the qualifications required for the types of work executed by supervisors and trained operatives under section 61B of the Roads (Scotland) Act 1984 (“the 1984 Act”).

These Regulations also make miscellaneous amendments to the Road Works (Reinstatement) (Scotland) Regulations 1992, the Road Works (Inspection Fees) (Scotland) Regulations 2003, the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 and the Road Works Qualifications of Supervisors and Operatives) (Scotland) Regulations 2017.

Part 2 of these Regulations prescribes processes relating to the plans to be entered into the SRWR under section 130A or 130B of the 1991 Act. Regulation 3 prescribes that when a plan is requested by the Scottish Road Works Commissioner (“the Commissioner”) under section 130A(3) or 130B(2), a person or a roads authority must submit a plan for the Commissioner’s approval within 90 days of the date of the Commissioner’s notice or such other period as the Commissioner may specify (being not less than 30 days from the date of the notice). Regulation 4 provides that the plans approved by the Commissioner must be kept under review for a period of 6 years from the date of the Commissioner’s approval.

Part 3 of these Regulations makes provision in relation to the qualifications needed for the types of work which requires to be executed by supervisors and trained operatives under section 61B of the 1984 Act. It also allows for the operation of rules for the recognition of equivalent qualifications in relation to supervisors and trained operatives found in the European Union (Recognition of Professional Qualifications) Regulations 2015 (“the 2015 Regulations”), which implement in part [Directive 2005/36/EC](#) of the European Parliament and of the Council (OJ L 255, 30.9.2005, p. 22) on the recognition of professional qualifications, as amended by [Directive 2013/55/EU](#) (OJ L 254, 28.12.2013, p. 132). Regulation 6 provides that a person has a prescribed qualification for a type of work listed in schedule 1 or 2 of these Regulations if the person is qualified in that type of work and the additional types of work specified in regulation 6(1)(b) (for supervisors) or regulation 6(2)(b) (for trained operatives). A person is qualified in a type of work if an approved body has issued a certificate of competence showing that the person has been assessed as having the required level of competence in that type of work (regulation 6(3)(a)) or if a competent authority has issued a certificate of recognition of equivalent qualifications obtained in a relevant European State (regulation 6(3)(b)). Certificates must be registered in the approved register. Regulation 7 provides for a grace period of two months following the issuing of a certificate or a renewal certificate before registration, during which the person issued with the relevant certificate is deemed to be qualified in the relevant type of work, notwithstanding that the certificate has not been registered or re-registered. Regulation 8 provides for the recognition of equivalent qualifications from other parts of the United Kingdom. Regulation 9 provides for recognition of restricted forms of qualification. Regulation 10 sets out the approved bodies for the purposes of issuing certificates of competence. The register of certificates is kept by the Scottish Qualifications Authority. Registration of a certificate expires after 5 years beginning with the date on which it was issued (regulation 11) but a certificate may be re-registered for any number of further periods in accordance with regulations 12 to 14. A person

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wishing to re-register a certificate for a type of work must obtain a renewal certificate for that type of work. An approved body may award a person a renewal certificate for a type of work if that person has been assessed or reassessed as having the required level of competence in that type of work (regulation 15). Regulation 16 exempts the Scottish Fire and Rescue Service from the requirement to have one trained operative on site where works it is undertaking involve breaking up the road.

Regulation 17 amends the Road Works (Reinstatement) (Scotland) Regulations 1992 (“the 1992 Regulations”). Regulation 17(2) updates definitions of “Code” and “immediate works”. Regulation 17(3) to (10) makes amendments to regulations 3 to 5 and 7 to 8 to reflect changes made to the updated Code of Practice in relation to categories of roads, the requirements of materials to be used and standards of work to be observed by undertakers executing road works. Regulation 17(11) inserts regulation 8A into the 1992 Regulations which sets out a guarantee period for permanent reinstatement of a road following road works of 2 years from the date of completion, or 3 years in case of deep excavations, if completed before 1 October 2023, or 6 years from the date of completion (regardless of the depth of reinstatement) if completed on or after 1 October 2023.

Regulation 18(2) amends regulation 3(4)(c) of the Road Works (Inspection Fees) (Scotland) Regulations 2003 by replacing the description of periods after the completion of permanent reinstatement with a reference to the period set out in regulation 8A of the 1992 Regulations. Regulation 18(3) provides for a temporary arrangements for the inspections carried out during the phase of works under regulation 3(4)(c) so that for any permanent reinstatement completed on or after 1 October 2023 but before 1 April 2028 the inspection period under that phase of works is to be 4 years preceding the end of the period specified for those permanent reinstatement works by regulation 8A of the 1992 Regulations.

Regulation 19 amends the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 (“the 2008 Regulations”) by inserting a definition of “working hours” and providing the requirement for the road works authority under section 112B(2A) of the 1991 Act and for the roads authority under section 112B(6) of the 1991 Act to enter in the SRWR the date on which the works were completed within two working hours of that completion (regulation 19(4) and (6)). Regulation 19(5) provides that under section 112B(5A) of the 1991 Act the date on and time at which the works began must be entered in the SRWR within two working hours of the works beginning. Regulation 19(7) inserts a new regulation 7A into the 2008 Regulations setting out a requirement for an undertaker under section 114A(2) of the 1991 Act to give notice of the date on and time at which the works began within two working hours of the works beginning. Regulation 19(8) inserts a new regulation 9(1A) into the 2008 Regulations providing new restriction periods for the execution of road works following substantial works carried out in a road. Regulation 19(10) amends regulation 13 of the 2008 Regulations to require an undertaker to give a notice for the purposes of section 129(3) or (4) of the 1991 Act within two working hours of a reinstatement of a road being completed.

Regulation 20 makes miscellaneous amendments to the Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 2017 following the amendments made by the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 to the operation of rules for the recognition of equivalent qualifications in relation to trained operatives and supervisors under the 2015 Regulations.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from Transport Scotland, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU and online at www.legislation.gov.uk.