

2009 No. 2257

HIGHWAYS, ENGLAND

**The Street Works (Qualifications of Supervisors and Operatives)
(England) Regulations 2009**

<i>Made</i>	- - - -	<i>18th August 2009</i>
<i>Laid before Parliament</i>		<i>25th August 2009</i>
<i>Coming into force</i>	- -	<i>6th April 2010</i>

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(a).

Citation, application and commencement

1. These Regulations—
 - (a) may be cited as the Street Works (Qualifications of Supervisors and Operatives) (England) Regulations 2009;
 - (b) apply in respect of street works in England; and
 - (c) come into force on 6th April 2010.

Interpretation

2. In these Regulations—
 - “the 1992 Regulations” means the Street Works (Qualifications of Supervisors and Operatives) Regulations 1992(b);
 - “the 2007 Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007(c);
 - “the Act” means the New Roads and Street Works Act 1991;
 - “approved assessment centre” means an establishment approved by an approved body for the purpose of assessing achievement of units of competence;
 - “approved body” has the meaning given to it by regulation 7(1);
 - “approved register” means the register mentioned in regulation 7(2);
 - “certificate of competence” means a qualification, award or an equivalent which is granted by an approved body;

(a) 1991 c.22. Functions of the Secretary of State, so far as exercisable in relation to Wales, are transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, article 2, Schedule 1.
(b) S.I. 1992/1687.
(c) S.I. 2007/2781.

“certificate of recognition” means a certificate issued in pursuance of regulation 4(1)(b) or (c) or 5(1)(b) or (c);

“registration body” means the Scottish Qualifications Authority;

“relevant State” means another member State, Iceland, Norway, Liechtenstein or Switzerland;

“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.

Amendment of the Street Works (Qualifications of Supervisors and Operatives) Regulations 1992

3. After regulation 1 of the 1992 Regulations insert the following regulation—

“1A. These Regulations do not apply in respect of street works in England.”.

Prescribed qualification for supervisors

4.—(1) A supervisor has a prescribed qualification for a particular type of supervisory work if, in respect of that work—

- (a) an approved body has issued the supervisor with a certificate of competence showing that the supervisor has been assessed by an approved assessment centre as having achieved the units of competence set out in Schedule 1 as required by Schedule 2 for that particular type of supervisory work; or
- (b) the Scottish Qualifications Authority(a) has issued a certificate of recognition stating that the supervisor meets the requirements of regulation 22(1)(a) or (b) (conditions for recognition of qualification in a relevant State) of the 2007 Regulations; or
- (c) the Scottish Qualifications Authority has issued a certificate of recognition stating that the supervisor 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 25(1) (conditions for compensation measures) of the 2007 Regulations(b);

and the certificate is registered in the approved register.

(2) For a period of two months beginning with the day on which a supervisor—

- (a) is assessed by an approved assessment centre as having achieved the units of competence set out in Schedule 1 as required by Schedule 2 for a particular type of supervisory work; or
- (b) is recognised by the Scottish Qualifications Authority as meeting the requirements of regulation 22(1)(a) or (b) of the 2007 Regulations in respect of a particular type of supervisory work; or
- (c) is successful when assessed following completion of an adaptation period of up to three years, or passes an aptitude test, as described in regulation 25(1) of the 2007 Regulations in respect of a particular type of supervisory work;

the supervisor shall have a prescribed qualification for the particular type of supervisory work, notwithstanding that the relevant certificate of that supervisor has not been registered in the approved register.

(3) Before 6th April 2011 a person who has been assessed by an approved assessment centre as having achieved the unit of competence set out in unit 10 in Schedule 1 shall have a prescribed

(a) The Scottish Qualifications Authority is the relevant competent authority for the United Kingdom under the 2007 Regulations (*see* regulation 4 and Part 1 of Schedule 1) for regulating Road/Street Works Operatives and Road/Street Works Supervisors.

(b) “Adaptation period” and “aptitude test” are defined respectively in regulations 23 and 24 (Compensation measures – adaptation periods and aptitude tests) of the 2007 Regulations.

qualification to act as a supervisor for the purposes of signing, lighting and guarding without registration of a certificate of competence.

Prescribed qualification for trained operatives

5.—(1) A trained operative has a prescribed qualification for a particular type of work if, in respect of that work—

- (a) an approved body has issued the trained operative with a certificate of competence showing that the trained operative has been assessed by an approved assessment centre as having achieved the units of competence set out in Schedule 3 as required by Schedule 4 for that particular type of work; or
- (b) the Scottish Qualifications Authority has issued a certificate of recognition stating that the trained operative meets the requirements of regulation 22(1)(a) or (b) (conditions for recognition of qualification in a relevant State) of the 2007 Regulations; or
- (c) the Scottish Qualifications Authority has issued a certificate of recognition stating that the trained operative 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 25(1) of the 2007 Regulations;

and the certificate is registered in the approved register.

(2) For a period of two months beginning with the day on which a trained operative —

- (a) is assessed by an approved assessment centre as having achieved the units of competence set out in Schedule 3 as required by Schedule 4 for a particular type of work; or
- (b) is recognised by the Scottish Qualifications Authority as meeting the requirements of regulation 22(1)(a) or (b) of the 2007 Regulations in respect of a particular type of supervisory work; or
- (c) is successful when assessed following completion of an adaptation period of up to three years or passes an aptitude test, as described in under regulation 25(1) of the 2007 Regulations in respect of a particular type of supervisory work;

the trained operative shall have a prescribed qualification for the particular type of work, notwithstanding that the relevant certificate of that trained operative has not been registered in the approved register.

(3) Before 6th April 2011 a person who has been assessed by an approved assessment centre as having achieved the unit of competence set out in unit 2 in Schedule 3 shall have a prescribed qualification to act as a trained operative for the purposes of signing, lighting and guarding without registration of a certificate of competence.

Freedom to provide services on a temporary basis

6.—(1) Nothing in regulations 4 and 5 shall affect an applicant's freedom to provide the services of a supervisor or a trained operative on a temporary and occasional basis in accordance with Part 2 (freedom to provide services on a temporary basis) of the 2007 Regulations.

(2) In this regulation "applicant" has the same meaning as in regulation 6(3) of the 2007 Regulations.

Qualification registration

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

- (a) the City and Guilds of London Institute;
- (b) the Scottish Qualifications Authority;

- (c) the CABWI Awarding Body^(a); and
- (d) any body that is an “approved body” within the meaning of the 1992 Regulations as they apply to Wales^(b), the Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 1992^(c) or the Street Works (Qualifications of Supervisors and Operatives) Regulations (Northern Ireland) 1998^(d).

(2) The register approved for the purpose of registering certificates mentioned in regulations 4 and 5 is the register to be kept by the registration body.

(3) Where an approved body has issued a certificate mentioned in regulation 4 or 5 the relevant approved assessment centre shall within one month request the registration body to register the certificate in the approved register.

(4) The registration body shall register the relevant certificate within one month of the following—

- (a) receipt of a request for registration made under paragraph (3); or
- (b) the issue by the Scottish Qualifications Authority of a certificate of recognition under regulation 4(1)(b) or (c) and regulation (5)(1)(b) or (c); or
- (c) receipt of an application for re-registration in accordance with regulation 10(2).

Restrictions on qualifications

8. 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 67 of the Act shall be deemed to be satisfied only in relation to the types of work to which that qualification relates.

9. 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 67 of the Act shall be deemed to be satisfied only in relation to the types of work to which that qualification relates.

Expiry of registration, reassessment and re-registration

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

(2) A certificate of competence or certificate of recognition may be registered for further successive periods of five years provided that an application for registration is received by the registration body no earlier than six months prior to and no later than six months after the expiry of the previous registration and, subject to paragraph (5), that application is accompanied by the relevant reassessment certificate of competence.

(3) A supervisor has a reassessment certificate of competence for a particular type of supervisory work if an approved body has issued that supervisor with a certificate showing that the supervisor has been assessed by an approved assessment centre as having achieved competence in the reassessment units set out in Schedule 5 required by Schedule 6 for that particular type of supervisory work.

(4) A trained operative has a reassessment certificate of competence for a particular type of work if an approved body has issued that trained operative with a certificate showing that the trained operative has been assessed by an approved assessment centre as having achieved competence in the reassessment units set out in Schedule 7 required by Schedule 8 for that particular type of work.

(a) This was formerly the Certification and Assessment Board for the Water Industry which was set up in 1991 to award NVQs for people working in the water industry. The name was changed to CABWI Awarding Body in 1998.

(b) See regulation 5(1).

(c) S. S. I. 1992/162; see regulation 5(1).

(d) S. R. (NI) 1992 No 20; see regulation 4(1).

(5) Until 5th April 2011 a certificate of competence or certificate of recognition may be registered for a further period of five years in accordance with this regulation without a reassessment certificate of competence.

Prescribed qualifications gained pursuant to the 1992 Regulations

11.—(1) A prescribed qualification registered before 6th April 2010 under regulation 3(1)(a) of the 1992 Regulations shall be deemed to have been registered under regulation 4(1)(a) of these Regulations on the date it was last registered.

(2) A prescribed qualification registered before 6th April 2010 under regulation 4(1)(a) of the 1992 Regulations shall be deemed to have been registered under regulation 5(1)(a) of these Regulations on the date it was last registered.

Signed by authority of the Secretary of State for Transport

18th August 2009

Sadiq Khan
Minister of State
Department for Transport

SCHEDULE 1

Regulation 4(1)(a)

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 highway.
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.

SCHEDULE 2

Regulation 4(1)(a)

Certificates of Competence for Supervisors

Type of Supervisory Work	Units of Competence Required
1. Monitoring excavation in the highway.	Unit 1,10, 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.	Units1, 10 and 16.
6. Monitoring signing, lighting and guarding.	Unit 10.

SCHEDULE 3

Regulation 5(1)(a)

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 highway.
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.

SCHEDULE 4

Regulation 5(1)(a)

Certificates of Competence for Trained Operatives

Type of Work	Units of Competence Required
1. Excavation in the highway.	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.
6. Signing, lighting and guarding.	Unit 2

SCHEDULE 5

Regulation 10(3)

Reassessment Units of Competence for Supervisors

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

SCHEDULE 6

Regulation 10(3)

Reassessment Certificates of Competence for Supervisors

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

SCHEDULE 7

Regulation 10(4)

Reassessment Units of Competence for Trained Operatives

Unit 1	Reassessed Location and avoidance of underground apparatus.
Unit 2	Reassessed Signing, lighting and guarding.
Unit 3	Reassessed Excavation in the road.
Unit 4	Reassessed Reinstatement and compaction of backfill materials.
Unit 5	Reassessed Reinstatement of sub-base and roadbase in non-bituminous materials.
Unit 6	Reassessed Reinstatement in cold-lay bituminous materials.
Unit 7	Reassessed Reinstatement in hot-lay bituminous materials.
Unit 8	Reassessed Reinstatement of concrete slabs.
Unit 9	Reassessed Reinstatement of modular surfaces and concrete footways.

SCHEDULE 8

Regulation 10(4)

Reassessment Certificates of Competence for Trained Operatives

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 67(1) and (2) of the New Roads and Street Works Act 1991 (subject to exceptions) requires one supervisor and one trained operative to be on site at all times when an undertaker executes road works involving breaking up the road or any sewer, drain, or tunnel under it, or tunnelling or boring under the road. In the case of opening the road, one trained operative is required to be on site.

These Regulations amend the Street Works (Qualifications of Supervisors and Operatives) Regulations 1992 so that those Regulations cease to apply to street works in England and then restate much of the provision, with some changes, with respect to England. These Regulations allow for the operation of the rules for the recognition of equivalent qualifications in relation to supervisors and trained operatives found in the European Communities (Recognition of Professional Qualifications) Regulations 2007 (SI 2007/2781) (which implements in part Council Directive 2005/36/EC^(a) of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications).

These Regulations prescribe the qualifications needed for the type of work being executed by supervisors (regulation 4) and trained operatives (regulation 5).

A supervisor or a trained operative has a prescribed qualification if an approved body has issued that supervisor or trained operative with a certificate of competence showing that they have been assessed as having achieved the relevant units of competence for the work being executed, as set out in Schedules 1 and 2 (supervisors) and Schedules 3 and 4 (trained operative) (regulation 4(1)(a) and regulation 5(1)(a)). Provision is made for the recognition of equivalent qualifications obtained in a relevant State (regulation 4(1)(b) and regulation 5(1)(b)) and provision is also made for workers to hold the prescribed qualification where they have successfully completed either an adaptation period or passed an aptitude test (regulation 4(1)(c) and regulation 5(1)(c)). Regulation 6 provides for the Regulations to have no restriction on the provision of services of a supervisor or trained operatives on a temporary basis. Regulation 7 prescribes the City and Guilds of London Institute, the Scottish Qualifications Authority and the CABWI Awarding Body as the approved bodies for the issuing of certificates of competence mentioned in regulations 4 and 5. The register of certificates is kept by the Scottish Qualifications Authority (regulation 8(2)).

Regulations 8 and 9 provide that prescribed qualifications may relate to all or any types of work to be done by a supervisor or trained operative. Regulation 10 provides that a registration expires after 5 years and that the supervisor or trained operative may be re-registered for further successive periods of 5 years provided the application is accompanied by the relevant reassessment certificate (Schedules 5 and 6 (supervisor) and Schedules 7 and 8 (operative)).

Regulation 11 provides that any registration of prescribed qualifications under the Street Works (Qualifications of Supervisors and Operatives) Regulations 1992 will be deemed to have been registered under these Regulations.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Street Work, 2/06 Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

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(a) OJ No L 255, 30.9.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No L 363, 20.12.2006, p.141.

2009 No. 2257

HIGHWAYS, ENGLAND

The Street Works (Qualifications of Supervisors and Operatives)
(England) Regulations 2009

£5.50