

2017 No. 147

ROADS AND BRIDGES

**The Road Works (Qualifications of Operatives and Supervisors)
(Scotland) Regulations 2017**

<i>Made</i>	- - - -	<i>9th May 2017</i>
<i>Laid before the Scottish Parliament</i>		<i>11th May 2017</i>
<i>Coming into force</i>	- -	<i>4th September 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 126 and 163(1) of the New Roads and Street Works Act 1991(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Road Works (Qualifications of Operatives and Supervisors) (Scotland) Regulations 2017 and come into force on 4th September 2017.

Interpretation

2.—(1) In these Regulations—

“the 1992 Regulations” means the Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 1992(b);

“the 2015 Regulations” means the European Union (Recognition of Professional Qualifications) Regulations 2015(c);

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

“adaptation period” has the same meaning as it has in regulation 30 of the 2015 Regulations;

“approved assessment centre” means an establishment which carries out the assessment of competence in the types of work which should be done by a trained operative or supervisor;

“approved body” means a body listed in regulation 8(1);

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

“aptitude test” has the same meaning as it has in regulation 31 of the 2015 Regulations;

“certificate” means a certificate of competence or certificate of recognition but does not include a renewal certificate;

(a) 1991 c.22. Section 126 of the New Roads and Street Works Act 1991 was amended by section 26(2) to (5) and section 33(2) of the Transport (Scotland) Act 2005 (asp 12). The functions of the Secretary of State under sections 126 and 163 were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1992/1675.

(c) S.I. 2015/2059, to which there are amendments not relevant to these Regulations.

“certificate of competence” means a qualification, an award or an equivalent certification in a type of work issued by an approved body;

“certificate of recognition” means a certificate of a type described in regulation 3(3)(b) or (c);

“competent authority” means a competent authority for the United Kingdom for regulating Road/Street Works Operatives and Road/Street Works Supervisors specified in Part 1 of schedule 1 of the 2015 Regulations;

“registration body” means the Scottish Qualifications Authority established under the Scottish Qualifications Authority (Establishment) (Scotland) Order 1996(a);

“renewal certificate” means a certificate issued in pursuance of regulation 13;

“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;

“type of work” means any of the types of work listed in schedules 1 and 2, and regulation 3(1)(b) and (2)(b).

(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) For the purposes of section 126 of the Act, 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) O1 - signing, lighting and guarding; and
 - (ii) LA - location and avoidance of underground apparatus.

(2) For the purposes of section 126 of the Act, 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) S1 - monitoring of signing, lighting and guarding; and
 - (ii) LA - 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

(a) S.I. 1996/2248.

taken and passed an aptitude test, as described in regulation 32(1) (conditions of compensation measures) of the 2015 Regulations, and the certificate is registered in the approved register.

Grace period before registration

4. For a period of two months beginning with the date on which a person is issued with a certificate or a renewal certificate for a type of work, the 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 schedule 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 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 England or Wales, it is prescribed by regulations made under sections 67 and 104(1) of the Act;
 - (ii) in relation to Northern Ireland, it is prescribed by regulations made under article 27 of the Street Works (Northern Ireland) Order 1995(a).

Restrictions on qualifications

6. A prescribed qualification as a trained operative or a supervisor may relate to all types of work listed in schedule 1 or schedule 2 that should be done by a trained operative or a supervisor or may be restricted to some such types of work and, in the latter case, the requirements of section 126 of the Act are deemed to be satisfied only in relation to the types of work to which the 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.

Qualification registration

8.—(1) The bodies approved for the purpose of issuing certificates of competence are—

- (a) The Scottish Qualifications Authority;
- (b) The City and Guilds of London Institute(b); and
- (c) The CABWI Awarding Body(c).

(a) S.I. 1995/3210.

(b) The City and Guilds of London Institute is a Royal Chartered Institute with the number RC117, and a charity registered in England and Wales under charity number 312832.

(c) The CABWI Awarding Body is a company limited by guarantee, registered in England and Wales under company number 2638349 and is a charity registered in England and Wales under charity number 1157706. This body was previously incorporated under the name "the Certification and Association Board for the Water Industry" until 17th July 1998.

(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 approved assessment centre which carried out the assessment referred to in regulation 2(2)(a) must, within one month beginning with the date of issue, request the registration body to register that certificate in the approved register.

(4) Where an approved body has issued a renewal certificate, the approved assessment centre which carried out the reassessment referred to in regulation 2(2)(b) must, within one month beginning with the date of issue, request the registration body to re-register the certificate to which the renewal certificate relates in the approved register.

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

- (a) receipt of a request for registration made under paragraph (3);
- (b) the issue by a competent authority of a certificate of recognition of a type described in 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 date on which it was issued, but 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 where—

- (a) an approved body has issued to the holder of the certificate a renewal certificate for that type of work; and
- (b) the renewal certificate was issued earlier than 48 months before the date of 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 issued to the holder of the certificate 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 date of 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—

- (a) an approved body has issued to the holder of the certificate a renewal certificate for that type of work; and
- (b) the renewal certificate was issued within the period of 12 months ending on the date of expiry of the previous registration.

(2) The further period for which a certificate is registered under this regulation begins on the day immediately 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 issued to the holder of the certificate 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 issue 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 the Scottish Fire and Rescue Service

14.—(1) This regulation applies where the Scottish Fire and Rescue Service established under section 1A of the Fire (Scotland) Act 2005^(a) is executing road works which do not involve—

- (a) breaking up the road, or any sewer, drain or tunnel under it; or
- (b) tunnelling or boring under the road.

(2) The duty under section 126(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.

Validity of certificates obtained under the 1992 Regulations

15.—(1) This regulation applies where immediately before the coming into force of these Regulations—

- (a) a person (P) held a certificate of competence (C) in any of the types of work referred to in schedules 2 and 4 of the 1992 Regulations that are mentioned in column 1 of schedule 3 of these Regulations; 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 a certificate of competence in the types of work mentioned in the corresponding entry in column 2 of schedule 3 of these Regulations.

(3) The certificate—

- (a) is deemed to be registered in the approved register until the day on which C would have ceased to be registered; and
- (b) may be re-registered in accordance with regulations 10 to 12.

(a) 2005 asp 5. Section 1A was added by section 101(1) of the Police and Fire Reform (Scotland) Act 2012 (asp 8).

Revocation

16. The 1992 Regulations are revoked.

St Andrew's House,
Edinburgh
9th May 2017

H YOUSAF
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulations 3(1), 5 and 6

Certificates of Competence for Trained Operatives – Types of work

O2 - Excavation in the road

O3 - Reinstatement and compaction of backfill materials

O4 - Reinstatement of sub-base and base in non-bituminous materials

O5 - Reinstatement in cold-lay bituminous materials

O6 - Reinstatement in hot-lay bituminous materials

O7 - Reinstatement of concrete slabs

O8 - Reinstatement of modular surfaces and concrete footways

SCHEDULE 2

Regulations 3(2), 5 and 6

Certificates of Competence for Supervisors – Types of Work

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

SCHEDULE 3

Regulation 15

Validity of certificates obtained under the 1992 Regulations

<i>Old Certificate</i>	<i>New Certificate</i>
Excavation in the road	LA - Location and avoidance of underground apparatus O1 - Signing, lighting and guarding O2 - Excavation in the road
Excavation, backfilling and reinstatement of construction layers with a cold-lay bituminous surface	LA - Location and avoidance of underground apparatus O1 - Signing, lighting and guarding O2 - Excavation in the road O3 - Reinstatement and compaction of backfill materials O4 - Reinstatement of sub-base and roadbase in non-bituminous materials O5 - Reinstatement in cold-lay bituminous materials
Reinstatement of construction layers in hot-lay and cold-lay bituminous materials	LA - Location and avoidance of underground apparatus O1 - Signing, lighting and guarding O5 - Reinstatement in cold-lay bituminous materials O6 - Reinstatement in hot-lay bituminous materials
Reinstatement of concrete slabs	LA - Location and avoidance of underground apparatus O1 - Signing, lighting and guarding O7 - Reinstatement of concrete slabs
Reinstatement of modular surfaces and concrete footways	LA - Location and avoidance of underground apparatus O1 - Signing, lighting and guarding O8 - Reinstatement of modular surfaces and concrete footways
Signing, lighting and guarding	O1 - Signing, lighting and guarding
Monitoring excavation in the road	LA - Location and avoidance of underground apparatus S1 - Monitoring of signing, lighting and guarding S2 - Monitoring of excavation in the road
Monitoring excavation, backfilling and reinstatement of construction layers with bituminous materials	LA - Location and avoidance of underground apparatus S1 - Monitoring of signing, lighting and guarding S2 - Monitoring of excavation in the road S3 - Monitoring of reinstatement and compaction of backfill materials S4 - Monitoring of reinstatement of sub-base and roadbase in non-bituminous materials S5 - Monitoring of reinstatement in bituminous materials
Monitoring reinstatement of construction layers in bituminous materials	LA - Location and avoidance of underground apparatus S1 - Monitoring of signing, lighting and guarding S5 - Monitoring of reinstatement in bituminous materials

Monitoring reinstatement of concrete slabs

LA - Location and avoidance of underground apparatus
S1 - Monitoring of signing, lighting and guarding
S6 - Monitoring of reinstatement of concrete slabs

Monitoring reinstatement of modular surfaces and concrete footways

LA - Location and avoidance of underground apparatus
S1 - Monitoring of signing, lighting and guarding
S7 - Monitoring of reinstatement of modular surfaces and concrete footways

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 126(1) of the New Roads and Street Works Act 1991 (“the Act”) requires that the execution of works is supervised by a person having a prescribed qualification as a supervisor where 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. Section 126(2) of the Act requires at least one person having a prescribed qualification as a trained operative to be on site at all times where an undertaker executes road works involving breaking up or opening the road or any sewer, drain or tunnel under it, or tunnelling or boring under the road.

These Regulations prescribe the qualifications needed for the types of work being executed by trained operatives and supervisors. They also allow for the operation of rules for the recognition of equivalent qualifications in relation to trained operatives and supervisors found in the European Union (Recognition of Professional Qualifications) Regulations 2015, 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 354, 28.12.2013, p.132).

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 3(1)(b) (for trained operatives) or regulation 3(2)(b) (for supervisors). 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 3(3)(a)). Provision is also made for the recognition of equivalent qualifications obtained in a relevant European State (regulation 3(3)(b)) and for workers to be considered qualified where they have successfully completed either an adaptation period or passed an aptitude test (regulation 3(3)(c)). Certificates must be registered in the approved register.

Regulation 4 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 5 provides for the recognition of equivalent qualifications from other parts of the United Kingdom.

Regulation 6 provides for recognition of restricted forms of qualification.

Regulation 7 provides for the Regulations not to restrict the provision of services of a trained operative or supervisor on a temporary basis.

Regulation 8 sets out the approved bodies for the purposes of issuing certificates of competence. The register of certificates is kept by the Scottish Qualifications Authority (regulation 8(2)).

Registration of a certificate expires after 5 years beginning with the date on which it was issued (regulation 9) but a certificate may be re-registered for any number of further periods in accordance with regulations 10 to 12. Those regulations provide for re-registration more than 48 months before expiry, more than 12 months (but not more than 48 months) before expiry, within 12 months of expiry and after expiry of a certificate. A person 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 13).

Regulation 14 exempts the Scottish Fire and Rescue Service from the requirement to have one trained operative on site where works do not involve breaking up the road or any sewer, drain or tunnel under it, or tunnelling or boring under the road.

Regulation 15 and schedule 3 contain savings provisions as regards certificates obtained under the Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 1992 (S.I. 1992/1675).

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF.

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