

Title: Repeal of Street Works Qualifications Requirements IA No: Lead department or agency: Department for Transport Other departments or agencies: N/A	Impact Assessment (IA)
	Date: 02/02/2011
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Other
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Summary: Intervention and Options	RPC: GREEN
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£11.7m	£11.7m	£1.4m benefit	Yes OUT

What is the problem under consideration? Why is government intervention necessary?

Currently all street works sites must be supervised by a person holding qualifications specified under the New Roads and Street Works Act (1991) (NRSWA) s.67 and associated regulations, and must have present one operative holding prescribed qualifications. These qualifications must be registered on the Street Works Qualifications Register, and (since April 2011) individuals must be reassessed five-yearly. The requirements were scrutinised as part of the Red Tape Challenge, and the Government has announced its intention to scrap them, as they represent a potentially unjustifiable burden to business and an additional layer of bureaucracy in the street works sector.

What are the policy objectives and the intended effects?

The policy objectives are to reduce cost to business, retain the current safety and reinstatement standards and potentially improve standards. Removing the requirements would enable the sector to decide on an individual level the most appropriate way of training their staff in order to meet prescribed standards for safety and reinstatement. It is hoped that the removal of bureaucracy will result in cost savings for the sector, and will give employers the opportunity to ensure their staff have the appropriate training, rather than just the mandatory training.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The preferred option (Option 1) is to repeal s.67 of NRSWA and associated regulations. This is a deregulatory measure, is consistent with the Government's policy on better regulation, and represents the largest saving to business.

We have also provided an option involving simplification of the regulations, while maintaining the requirement for operatives and supervisors to have mandatory qualifications (Option 2).

We intend to consult on these options, as well as a 'do nothing' option.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: None	Non-traded: None

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Scrap Street Works Qualifications Regulations

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 4.648	High: 18.765	Best Estimate: 11.707

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	Optional
High	0	0	Optional
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

None

Other key non-monetised costs by 'main affected groups'

Course providers and the Street Works Qualification Register could lose income, but any loss to these groups is evened out as it represents a saving to business in general.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	0.54	4.648
High	Optional	2.18	18.765
Best Estimate	0	1.36	11.707

Description and scale of key monetised benefits by 'main affected groups'

Street works undertakers may be able to generate savings as a result of the relaxation of prescriptive regulation around qualification requirements.

Other key non-monetised benefits by 'main affected groups'

Increased competition in the street works training market as a result of proposed changes may result in lower prices for training courses. If employers are able more accurately to target training to their staff, safety and reinstatement standards may rise as staff will be better trained.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

It is unclear how many street works undertakers will choose to stop using the NRSWA Qualifications and Street Works Qualifications Register and find other methods of training their staff, and what savings this could generate. We have assumed that every operative holds only one qualification – they may hold several, and so the potential efficiency savings would be higher. There is also a risk – considered very unlikely and so not quantified – that standards of safety and reinstatement at sites could drop.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 1.408	Net: 1.408	Yes	OUT

Summary: Analysis & Evidence

Policy Option 2

Description: Amend the legislation to make Street Works Qualifications Regulations less burdensome

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 1.894	High: 4.648	Best Estimate: 3.244

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

None

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	0.22	1.894
High	Optional	0.54	4.648
Best Estimate	0	0.38	3.244

Description and scale of key monetised benefits by 'main affected groups'

More flexibility around units taken and when reassessment takes place should generate small savings for the sector.

Other key non-monetised benefits by 'main affected groups'

None

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The saving generated by these regulatory changes is unclear, as we cannot estimate how many operatives would benefit from an increase in the reassessment window or more flexibility in the units they choose to take. It is also unclear how the sector might react to the proposed changes.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0.394	Net: 0.394	Yes	OUT

Evidence Base

Background

1. There are approximately 1.2m street works carried out by statutory undertakers (mostly utilities) every year. Because of market failures where undertakers' incentives to carry out work as cheaply as possible do not align with the need for works to be carried out safely, the road to be reinstated to an acceptable standard after works and the minimum possible disruption caused to road users, Government regulates in these areas. Statutory codes of practice dictate safety and reinstatement standards in great detail.
2. In addition, the New Roads and Street Works Act (1991) (NRSWA) specifies that undertakers have a duty to ensure that a person with a prescribed qualification as an operative is present at all times when street works are being carried out, and also that the works are supervised by a person with a prescribed qualification as a supervisor. These qualifications include units on safety and methods of excavation and reinstatement. For simplicity, in the rest of this impact assessment we refer to the qualifications currently prescribed as 'the NRSWA qualifications'. Further, we have made reference only to 'operatives' – but the same points hold true for supervisors.
3. NRSWA prescribes that operatives pass a multiple choice open book test on the units making up the qualifications they wish to hold (for example, one qualification is for excavation, and others are for reinstatement of different kinds of material) – units can be taken at different times. This test must be taken at an assessment centre accredited by one of three awarding bodies: City and Guilds, the Scottish Qualifications Authority and CABWI. All operatives must register their qualifications with the Street Works Qualifications Register (SWQR), which issues them with a plastic card displaying their qualifications.
4. In April 2011 a new requirement that qualifications must be reassessed (and then re-registered) every five years was brought into force. The impact assessment which accompanied these changes can be found at <http://www.ialibrary.bis.gov.uk/ImpactAssessment/?IAID=3baa58b31ca8496aba9c748b3a90ae6d>, and the regulations at <http://www.legislation.gov.uk/ukSI/2009/2257/contents/made>. These changes have caused significant problems in the sector:
 - a. The requirement is for reassessment to take place in the period from six months before to six months after the qualification expiry date. This has resulted in some operatives missing the deadlines and so needing to take the full assessment from scratch, but of more concern are a number of operatives who have decided to be reassessed early in an effort to bring their skills up to date (for example, if they have not worked on the road for a number of years), but who cannot register that early reassessment and so must return to be reassessed again when they reach their 'window'. The prescription that reassessment cannot be registered prior to six months before the qualification expires thus has the perverse effect of penalising operatives who responsibly choose to update their skills at the appropriate time for their work by forcing them to undertake reassessment twice.
 - b. Operatives may encounter difficulties if their units have been taken at different times. As reassessment is due when the card expires (five years after the 'safety' units were taken), some are having to be reassessed on some units early, which represents a cost, as the cost of taking the assessment does not last for 5 years as expected, but must be incurred earlier. As reassessment was not previously a requirement, this did not cause problems before – operatives did not incur substantial additional cost by reregistering units early.
 - c. The costs of requiring reassessment are high. When the Department called a range of training centres at random, the average cost of a training course and reassessment was £200 per day, with some assessment centres offering two day courses. None of the assessment centres we called offered the facility to take the test without paying for training. This is at odds with the impact assessment which accompanied the changes, which estimated that 65% of operatives would not require refresher training, and so would only pay £9.87 for a test and then to register their card with the SWQR. There are also costs associated with lost output while operatives are being trained.
 - d. It has come to our attention that many larger employers are seeking to reduce the costs of training staff by using their purchasing power to negotiate discounts with training providers.

While we wouldn't want to discourage this, it suggests that smaller firms and operatives who do not have a permanent employer may be paying significantly more for NRSWA qualifications, which could distort the market. It also implies that course providers are currently extracting significant profit, possibly because the qualifications are compulsory.

- e. It has become apparent that efforts to inform operatives of the changes have not been fully successful. A high number of operatives are not aware of the new requirement to be reassessed, and so miss their 'window'. While they are without a qualification, they cannot work as the qualified operative on site, so they can lose out financially and their employer must find another operative to carry out the function, creating an additional cost for firms.
5. As part of the Highways Red Tape Challenge in 2011, the street works qualifications came under particular scrutiny. The Secretary of State announced her intention to scrap the street works qualifications regulations on 15 December. Some reasons for this include:
- a. The sector is already required to comply with Health and Safety duties, and duties to reinstate the road adequately. The Department publishes codes of practice offering detailed statutory guidance on street works safety and reinstatements, and highway authorities inspect sites to ensure that the guidance is complied with. Setting mandatory qualifications in addition to this already very prescriptive legal framework adds another costly layer of bureaucracy for business, and is an example of regulating 'inputs' as well as 'outputs'. It should be for individual businesses to determine how they will train their staff in order to meet their obligations under the legislation.
 - b. The qualifications are very prescriptive, which leads to unintended consequences. For example, the Department has been made aware of cases where operatives were required by law to take the qualifications, but the qualifications did not cover the activities the operatives were carrying out. We are also aware of cases where operatives were required to learn subjects which were not relevant. For example, operatives who had to learn how to operate portable light signals, when their work would not require them to do that activity. This is an inefficient use of resources, and costs are passed on to utility bill payers.
 - c. The requirement to pass a multiple choice test, which primarily examines operatives' ability to navigate codes of practice, does not ensure that street works are carried out safely or reinstated properly. Although operatives may have the requisite knowledge, they may still cut corners day-to-day.
 - d. There is also an issue of parity between highway authorities and undertakers. Each carry out around half the works in the road, but highway authorities' staff do not have to hold prescribed qualifications. Highway authorities themselves specify the level to which their staff must be qualified.
 - e. In addition to the NRSWA Qualifications, there are other qualifications appropriate to carrying out works in the street. These are often held by operatives working on behalf of highway authorities. Requiring a qualification of some operatives but not of others results in a non-level playing field, and restricts the movement of operatives between sectors.

Options

6. We intend to consult on the following options.

Option 0 (Do nothing)

7. Retaining the current system is not considered a viable solution because of the many problems the new reassessment requirement is causing businesses, and so no analysis of impacts has been made. This represents the baseline.
8. The following two options are analysed against this baseline option.

Option 1 (preferred – Scrap Street Works Qualifications Regulations)

9. The Department's preferred option is to scrap the requirement for operatives and supervisors to hold prescribed qualifications, and instead to leave employers to determine the training their staff require in order to meet their obligations to carry our works safely and reinstate the road properly. The statutory codes of practice covering safety and reinstatement will remain in place.

10. This will require an amendment to NRSWA s.67. The Department will identify a suitable legal vehicle for the amendment if the decision is taken to scrap the qualifications after consultation.

Option 2 (Amend the legislation to make Street Works Qualifications Regulations less burdensome)

11. We could amend the regulation to make it less burdensome to business. After informal consultation with the sector, we propose the following changes to the Street Works (Qualifications of Supervisors and Operatives) (England) Regulations 2009:
 - a. Removing the stipulation in 10(2) that qualifications may not be re-registered earlier than six months prior to the expiry of the previous registration, which would prevent those who re-register before they were legally required to from being penalised;
 - b. Amending the Schedules to the Regulations such that operatives and supervisors could hold individual units, rather than needing to hold several to acquire a certificate of competence. This would enable them to choose which units were appropriate to their circumstances.
12. This option would address some of the specific difficulties associated with the legislation, but would not remove all burdens:
 - a. It would enable operatives to be trained on fewer irrelevant topics, but while the units remain centrally set there is no way for all operatives to have the best fit for them – they would still be likely to receive irrelevant training. For example, the compulsory unit on signing, lighting and guarding covers portable light signals, and not all operatives use portable light signals, the setting up of which is often subcontracted.
 - b. The costs of operative reassessment are very high. The DfT does not regulate this cost, and it varies between different providers; a small survey of providers suggests charges between £98 and £379, with an average of £201 per qualification taken. Part of the reason for the high cost is that providers are not permitting operatives to just take the test, instead insisting on training beforehand, whether the operative needs it or not. The relevant awarding bodies state they have no levers over the price charged.
 - c. The amendments do not address the principles of better regulation. We would be continuing to set mandatory standards for safety and reinstatement, and mandatory training for operatives to reach those standards.
13. When we consult we will ask for views on these ideas as well as suggestions for other amendments.

Costs and Benefits

14. As this is a consultation stage impact assessment, we have produced analysis based on potential percentage efficiency savings.. We intend to ask as part of the consultation for information to enable us to produce a more detailed assessment of impacts.
15. We have used a base year of 2013 as it is unlikely that changes would come into force before then, given the need to amend regulations and potentially primary legislation.

Option 1

16. It is important to note that scrapping the requirements would not necessarily mean that operatives ceased to take the qualifications, or ceased registering them with the SWQR. Employers will be able to choose the most appropriate training for their staff, and the sector as a whole may find the provision of a centralised register of qualifications useful. Given the uncertainty around how the sector might react, it is difficult to accurately quantify costs and benefits.

Costs

17. There are no direct costs associated with scrapping the requirements.
18. There are some potential indirect costs:
 - a. Training centres (and consequently the three awarding bodies) could lose revenue if employers no longer made use of their services to obtain NRSWA qualifications. However, this is likely to be offset by the increase in revenue for other providers, as employers will still have a duty to

ensure their staff are adequately trained, and may require their staff to take other qualifications. This would therefore not be a cost, but a redistribution.

- b. If the sector chose to no longer register qualifications on the SWQR, the SWQR could lose that revenue stream. This totals £500,000 per year, though any revenue lost would be money not spent by the utility sector.

Benefits

19. The principal benefit of scrapping the requirement to hold NRSWA qualifications is the flexibility it would afford the sector to decide what level of training is appropriate in each case. This is likely to result in some savings to business, and will also increase competition between providers of different qualifications, as it will expand the pool of suppliers that undertakers can use for training purposes, because they will no longer be constrained to those providing NRSWA qualifications. The increased competition is likely to bring costs of training down. In addition, current mandatory training requirements may limit innovation in the supply market.
20. The value of benefits will, like costs, be determined by the extent to which the sector chooses to continue to use the NRSWA qualifications and SWQR. Costs of the NRSWA qualifications are estimated at:
 - a. From the impact assessment which accompanied the change to reassessment, initial training costs between £550 and £824. Based on our survey of assessment centres, we estimate a cost of reassessment to be between £98 and £379 per operative, with a mean cost of £201. This is incurred 5-yearly.
 - b. In addition to this, registration and re-registration with the SWQR cost £21.50.
 - c. In 2010, 10,625 candidates registered for the first time and 15,120 re-registered. We have assumed this number is constant year-on year.
 - d. The current regime therefore costs in the region of £10.9m per year, assuming each operative holds only one qualification. $(£21.50 \times (10,625 + 15,120) + 10,625 \times (£550 + £824) / 2 + 15,120 \times 201 = £10,892,012.5)$
21. We cannot accurately predict the scale of the change that would occur if the qualifications were no longer mandatory, as it relies at least in part on the sector's willingness to change. If scrapping the qualifications regulations resulted in only a 5% saving, as employers found more efficient ways of training their staff, there would be a saving of approximately £0.54m per year. A 20% efficiency gain would result in a saving of £2.18m / year.
22. The Net Present Value is therefore £4.648m - £18.765m, and the Equivalent Annual Net Benefit to business is £0.559m - £2.256m.
23. If costs could be reduced, it is likely that part of any saving would be passed on to utility consumers, as utilities' fixed costs would have reduced.
24. If operatives' training more closely reflects their needs, it is possible that we would see an improvement in reinstatement and safety standards, which would generate cost savings resulting from reduced congestion (when the reinstatement has to be re-done), reduced damage to cars from poor reinstatements, longer road life, and a reduction in injuries at street works sites.

Option 2

Costs

25. There is a potential very small cost to business as a result of amending the regulations. If, because of the changes to the schedules, any changes were required to the layout of the cards operatives carry, or to the IT systems of the SWQR to accommodate the change, this cost would potentially raise the cost of registration or re-registration. This cost is likely to be small (pennies per registration fee), but would be explored with the SWQR if option two were to be taken forward.

Benefits

26. Benefits of option two are likely to be considerably lower than those of option one, as it does not address all burdens. We cannot accurately predict how great savings will be, as we are unsure how many operatives are currently experiencing problems as a result of the regulations. If amendments

resulted in efficiency gains of 2%, savings could be £0.22m / year. If efficiency gains were in the region of 5%, savings could be £0.54m / year.

27. The Net Present Value is therefore £1.894m - £4.648, and the Equivalent Annual Benefit to business is £0.228m - £0.559m.

Key assumptions, sensitivities and risks

28. The savings assume that the sector would use their increased flexibility to seek cost savings. The consultation process will provide more certainty as to how the sector will react.
29. We will seek further information about the costs of assessment and reassessment in the consultation.
30. Training centres and those in the sector have incurred costs preparing for the new requirement for reassessment introduced earlier this year. As these costs have already been incurred, scrapping the requirements or keeping them would have no impact.
31. There is a risk that no longer having prescribed qualifications could result in a drop in standards of safety and reinstatement at street works sites, but this risk is considered small as undertakers will still be required by law to meet the standards.

Wider Impacts

Statutory Equality Duties

32. The Government does not consider that there will be any impact on statutory equality duties. An Equality Impact Assessment is not considered necessary or proportionate.

Competition and Innovation

33. Option 1 would have a positive impact on competition and innovation, as undertakers would be able to choose their preferred training and qualification providers. No impact on competition or innovation is envisaged with Options 2, as street works qualifications are mandatory for all statutory undertakers.

Small Firms Impact Test

Option 1 would have a positive impact on small firms, as they would no longer be required to comply with mandatory, often costly, qualification requirements, but could instead come to proportionate decisions on how best to meet their statutory obligations. The measure is deregulatory and imposes no transitional costs. Businesses can choose to continue with the current arrangements, or may choose to find another training provider. No particular impact on small firms is envisaged with Option 2, as street works qualifications are mandatory for all statutory undertakers (which are all very large businesses).

Microbusiness moratorium

34. Microbusinesses are in scope of this measure, but we do not expect any to be affected. We will assess during consultation whether a waiver to the moratorium would be required.

Environmental issues

35. No impact on the environment or greenhouse gas emissions is envisaged.

Human Rights

36. The Department has identified no impact on human rights.

Justice System

37. By removing an offence from the statute books, Option 1 should reduce pressure on the justice system. Options 2 would have no impact.

Health and Well-being

38. Although there is a risk that removing the requirement for operatives and supervisors to have mandatory safety qualifications could lead to insufficient training and consequently more accidents,

the Department feels that employers' duties under health and safety legislation should preclude this happening. Options 2 would have no impact.

Sustainable Development

39. The Department has identified no conflict between any of the Options being considered and sustainable development principles.

Rural Areas

40. The Department does not consider that there will be any difference in impact between rural and urban areas.

Devolved Administrations

41. The devolved administrations have indicated that they wish to retain the current situation regarding street works qualifications. The issue is devolved.

Summary

42. Option 1 is the Department's preferred option, as it offers the potential for significant efficiency gains and savings for business, and brings the regulation of street works operatives' training in line with better regulation principles. Option 2 offers much more limited savings, and would mean the Government continued to regulate both inputs and outcomes in the area of street works operatives' training.
43. We intend to launch a 12 week consultation on Options 1 and 2, and follow this with a more detailed analysis of costs and benefits.

Annex A: Extract from the New Roads and Street Works Act (1991)

s.67 Qualifications of supervisors and operatives.

- (1) It is the duty of an undertaker executing street works involving—
 - (a) breaking up the street, or any sewer, drain or tunnel under it, or
 - (b) tunnelling or boring under the street,to secure that, except in such cases as may be prescribed, the execution of the works is supervised by a person having a prescribed qualification as a supervisor.

- (2) It is the duty of an undertaker executing street works involving—
 - (a) breaking up or opening the street, or any sewer, drain or tunnel under it, or
 - (b) tunnelling or boring under the street,to secure that, except in such cases as may be prescribed, there is on site at all times when any such works are in progress at least one person having a prescribed qualification as a trained operative.

- (3) An undertaker who fails to comply with his duty under subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (4) Regulations made by the Secretary of State for the purposes of this section may include provision with respect to—
 - (a) the approval of bodies conferring qualifications (and the withdrawal of such approval),
and
 - (b) the circumstances in which a qualification may be conferred.