

Deregulation of street works qualifications – summary of consultation submissions and Government response

Summary and Government Response

The purpose of this consultation was to invite views on proposals to scrap the requirements for street works operatives and their supervisors to hold specific qualifications. These requirements are prescribed in law through the New Roads and Street Works Act 1991 (NRSWA) and the Street Works (Qualifications of Supervisors and Operatives) (England) Regulations 2009.

These proposals were put forward as part of the Government's Red Tape Challenge initiative, which seeks to identify excessively burdensome or unnecessary regulations and remove them from the statute book, or revise them to make them less burdensome.

The consultation asked questions on two options. Option 1 was to scrap the requirement to hold NRSWA qualifications. Option 2 was to retain the requirement to hold NRSWA qualifications but to simplify the regulations.

This document is divided into five parts:

- This section provides a summary of the consultation responses;
- Part 1 gives the Government's response to the consultation.
- Part 2 reviews, in detail, the responses to questions on Option 1;
- Part 3 reviews, in detail, the responses to questions on Options 2; and
- Part 4 reviews responses to questions on the potential use of a Legislative Reform Order (LRO) to bring about the deregulation proposed under Option 1.

Overall, the responses show that there is some interest in amending and simplifying the qualification regulations, with 32% of responses indicating support for simplification as a first choice. However, there was strong opposition to complete deregulation of the qualification requirement. Of the 93 responses submitted only 4 responses were in favour of repeal of the street works qualifications. These supportive responses were received from one large utility, one county council and two organisations involved in the development and delivery of alternative training.

Summary of responses in favour of each option:

Response category (number of responses in this category)	Responses in support of repeal of street works qualifications	Support some change to qualifications but not repeal	Amendment of the regulation is not first choice but not fully opposed	Responses opposed to any change
Local Government (40)	1 (3%)	10 (25%)	19 (48%)	10 (25%)
Utilities (18)	1 (6%)	4 (8%)	13 (72%)	0 (0%)
Training providers (7)	0 (0%)	3 (43%)	2 (28%)	2 (28%)
Other (28) of which:	2 (7%)	13 (46%)	10 (36%)	3 (11%)
<i>Representative Org. (16)</i>	1	7	5	3
<i>Large company (3)</i>	0	3	0	0
<i>SME (2)</i>	0	0	2	0
<i>Member of the public (1)</i>	0	0	1	0
<i>Other (6)</i>	1	3	2	0
Total responses (93)	4 (8%)	30 (32%)	44 (47%)	15 (16%)

Part 1: Government Response

The vast majority of responses were not in favour of scrapping the requirement for specific street works qualifications and a number of concerns were raised. Many of the responses highlighted the risk of unintended consequences from the reforms.

Of particular concern was the potential for a drop in standards of workmanship or an increase in unsafe working. The local highway network in England is worth significantly more than £100bn, and potholes from the three winters of 2009/10-2011/12 are reported to have cost £1.3bn¹ in England and Wales. The risk of a reduction in workmanship leading to a greater damage to the roads is judged by many local authorities to be too great to support the reforms.

In the utility companies' responses the risk of a single national qualification system being replaced by local varying requirements was a significant concern. Where local authorities have street works permit schemes qualification or training requirements could be introduced as a condition of the permit scheme, if they were shown to be reasonable. No permit authority currently takes this approach. However, several utility companies noted that if locally varying requirements were introduced as a consequence of the national deregulation this could result in a significant increase in their costs.

In response to these concerns the Government has decided to maintain the existing qualifications regulations.

¹ HMEP 2012: "Potholes Review" available at <http://assets.dft.gov.uk/publications/pothole-review/pothole-review.pdf>

Part 2: Responses to Option 1 – deregulation of street works qualifications

Within the consultation document, questions 1, 2, 3, 4, 5, 11 and 12 (and any additional statements or data provided in response to questions 13 and 14) provided the opportunity for comment on the Government proposal to repeal the regulations. The response to each of the questions is given below. A number of comments were made to support the agree/disagree and yes/no answers. Many comments were repeated across different questions and so all general comments have been combined and summarised at the end of this section.

Q1) Do you agree that those working in the sector should have more flexibility to decide the training that is appropriate for them and their employees?

Category (number of responses)	agree	disagree
Local Government (38)	9	29
Utility (18)	4	14
Training providers (7)	2	5
Other (25)	6	19
Total responses (88)	21	67

Q2) How good a fit are the NRSWA qualifications for the work you / your employees carry out? a) much more than you need to know for your work b) a bit more than you need to know for your work c) exactly what you need for your work d) a bit less than you need for your work e) much less than you need for your work f) some extra things and don't cover some things that you need for your work.

Category (number of responses)	a	b	c	d	e	f
Local Government (35)	0	3	25	5	0	2
Utility (14)	0	1	10	3	0	0
Training providers (5)	0	0	2	1	2	0
Other (17)	1	1	8	4	0	3
Total responses (71)	1	5	45	13	2	5

Q3) Do you have any extra training on safe excavations, signing / lighting / guarding and reinstatement, in addition to the training required to pass NRSWA assessment / reassessment (an example might be toolbox talks)?

Category (number of responses)	Yes	No
Local Government (39)	31	8
Utility (17)	14	3
Training providers (3)	2	1
Other (16)	8	8
Total responses (75)	55	20

Additional training listed: Highways Sector Scheme, Temporary Traffic Management, reinstatement using new products, plant training, identification of underground apparatus, use of cable location devices, safe digging, deep excavations, Control of Substances Hazardous to Health (COSHH), safety in construction (IOSH), the Construction Skills Certificate Scheme (CSCS), refresher training, practical training off the job, onsite coaching, stand down days, briefing, chainsaw works, abrasive wheels, thermoplastic applications, VRS, MEWP, confined spaces, manufacturer's equipment specific training, driver awareness, safe lifting, main laying (1,2,& 3), service laying (1,2, & 3), tool box talks, vocational qualifications that include some content relating to street works, site manager safety training scheme (SMSTS) training, and further qualifications such as BTEC diplomas, National Examination Board in Occupational Safety and Health (NEBOSH), Construction Design Management Coordinator (CDMC) and Incorporated Engineer (IEng) professional registration.

Q4) If NRSWA qualifications were no longer mandatory, would you still choose to take them / ensure your staff took them, or would you choose to have different training?

Category (number of responses)	Yes	No
Local Government (37)	30	7
Utility (16)	15	1
Training providers (4)	1	3
Other (17)	12	5
Total responses (74)	58	16

Q4(b) do you think different training would cost more or less than training for the NRSWA qualifications?

Category (number of responses)	more	less
Local Government (19)	14	5
Utility (9)	9	0
Training providers (4)	3	1
Other (12)	10	2
Total responses (93)	36	8

Q5) Would you still register your / your employees' qualifications with the street works qualification register if it were no longer mandatory to do so?

Category (number of responses)	Yes	No
Local Government (37)	22	15
Utility (15)	6	9
Training providers (4)	1	3
Other (16)	9	7
Total responses (72)	38	34

Q11) Please rank the options ‘giving the sector the flexibility to decide training’, ‘simplifying the regulations’ and ‘leave the system as it is’ in order of preference.

Preferred options:

Category (number of responses)	Sector decide training	simplify regulations	leave alone
Local Government (40)	1	10	29
Utility (18)	1	4	13
Training providers (6)	0	2	4
Other (25)	2	12	11
Of which:			
<i>Representative Org. (15)</i>	1	7	7
<i>Large company (3)</i>	0	3	0
<i>SME (2)</i>	0	0	2
<i>Member of the public (1)</i>	0	0	1
<i>Other (4)</i>	1	2	1
Total responses (89)	4	28	57

From the comments and rankings provided, a number of respondents indicated that they do not give any support to (or do not agree with) one of the options. These responses are summarised below:

Options not supported at all (if specified):

Category (number of responses)	“sector decide training” not supported	Any form of simplifying not supported*	“leave as it is” not supported
Local Government	15	10	1
Utility	10	0	0
Training providers	3	2	0
Other	12	2	3
Of which:			
<i>Representative Org.</i>	9	2	2
<i>Large company</i>	1		1
<i>SME</i>	1		
<i>Member of the public</i>			
<i>Other</i>	1		
Total responses (58)	40	14	4

*(ranked leave alone as 1 and also don't support change in Q7,8&9)

Q12) Do you agree with the assumptions made in the impact assessment?

Category (number of responses)	Yes	No
Local Government (32)	6	26
Utility (12)	1	11
Training providers (6)	1	5
Other (19)	2	17
Total responses (69)	10	59

Comments on why the impact assessment assumptions were considered inaccurate were:

- Cost for NRSWA training will increase, not decrease - standardised training ensures consistent skill and drives down cost of training through market forces. Non-mandatory training could cost the industry more as the course volume/take-up would be unknown at the time of preparation and planning, meaning that training providers could not estimate accurately for a commercially viable charge for courses
- Any drop in safety standards leading to more accidents would be very costly.
- The NRSWA regulations could result in a proliferation of Highway authority schemes [in permitting authorities] and increase employer costs of compliance.
- LAs seek to raise revenue from utilities and their contractors. Removing a recognised system could introduce a way for this to happen.

General comments

The majority of concerns raised over deregulating qualifications covered eight themes:

- **Risk to standards of workmanship:** There is a widely held concern that levels of training, especially for smaller companies and contractors, will drop due to commercial pressure to reduce expenditure, leading to a reduction in workmanship standards.
- **Inspections are not considered sufficient to ensure standards:** There were frequently stated concerns that the current inspection regime is not sufficient to ensure standards. Currently a relatively small proportion of works are inspected for compliance with safety standards during the works. Similarly, only a proportion of works are inspected for reinstatement quality and many highway authorities report high failure rates for inspections.
- **New inconsistent qualification requirements:** In contrast to the concerns above, utilities and contractors raised concerns that highway authorities may introduce qualifications as a condition of permit schemes. Several responses noted that, should varying local permit conditions on qualifications be introduced, this could lead to a far higher burden on companies than the current system.
- **Workforce mobility:** The concern was raised that varying qualifications requirements across the utility sector could reduce the mobility of individual operatives.
- **Availability of training:** Concerns were raised that if deregulated, the current NRSWA qualification could cease to exist as, over time, as fewer people would take the qualification.
- **Costs of training:** There is a concern is that the current standardised training drives down cost of training through economies of scale and the guaranteed demand for training. More than 80% of respondents were concerned that non-mandatory training could cost more due to uncertainty over the take-up of training.
- **Existing flexibility in training:** Several respondents felt there is sufficient flexibility in training at present. The view expressed was that the qualifications set out the standard that must be achieved, not the training that should be taken to meet this standard. As such there is already flexibility in the training taken/provided in order to pass the qualification.
- **Undermining of HAUC** – A number of local authority responses warned against the Government continuing with deregulation when HAUC is strongly opposed to

the measure. Stating that this could undermine the role of HAUC and jeopardise the participation in HAUC working groups, particularly for local authorities.

The arguments made in favour of deregulation were focused on five themes:

- **Excessive 'one size fits all' requirements:** The argument was made that deregulation would allow organisations to train to provide the level of competency that meets the needs of the business and the risks of their work, without being forced by law to train to a level of competence required to gain the current required accreditation in addition to this.
- **More flexible and appropriate alternatives:** Deregulation would allow the development of new qualifications such as NVQs or apprenticeships, or an extension of the existing Construction Skills Certification Scheme (CSCS).
- **Qualifications do not ensure competence:** It was noted holding a qualification does not ensure competence as skill can be lost or poor working practices acquired since the qualification was obtained.
- **Appropriate training would still be needed without the street works regulations:** It was noted that compliance with Health and Safety law and the reinstatement Code of Practice would require companies to carry out training. A large majority of responses, including all but one utility, stated that they would continue to take the NRSWA qualifications if they were not mandatory.
- **Costs:** While many respondents felt that costs of NRSWA training would increase, see above, several responses stated that savings would be made by more diverse training (including in-house training) and as the number of awarding bodies available to accredit centres increased promoting competition.

Part 3: Responses to Option 2 - amendment of qualifications requirements

Within the consultation document, questions 6, 7, 8, 9 and 10 provided the opportunity for comment on the Government proposal to repeal the regulations. The response to each of the questions is given below. General comments on simplifying the regulations are summarised under Q10.

Q6) Do you agree that the current regulations are too complex and prescriptive?

Category (number of responses)	Yes	No
Local Government (39)	4	35
Utility (18)	7	11
Training providers (6)	4	2
Other (22)	7	15
Total responses (85)	22	63

Q7) Do you agree that operatives and supervisors should be able to hold individual units?

Category (number of responses)	Yes	No
Local Government (39)	18	21
Utility (18)	16	2
Training providers (6)	3	3
Other (22)	15	7
Total responses (85)	52	33

Comments made in support for individual units:

- Single units would make more flexible and create cost savings. This was seen when the signing, lighting and guarding was made a single unit.
- Operatives who dig up the road are often different to those who reinstate it. Separate unit could be supported by an umbrella module that covers all the basics and covers the lifecycle of a job to show where each module fits together.
- Would be useful to maintain guidance on which units would normally be bunched together for certain activities.
- Unit 001 Cable location and detection could be a useful stand alone unit.
- Skills such as setting out portable traffic signals are often not required as they are undertaken by specialist companies.

Comments made against separate units:

- Operatives should be allowed to specialise, supervisors need a broad knowledge.
- Segregation of units for supervisors needs closer scrutiny as they are deployed in a different way.
- Excavation and reinstatement cannot be seen in isolation to safety at site and this forms the basis to working on the highway. Therefore all modules should

be undertaken in one sitting to encapsulate all disciplines required to work on the highway.

- Units are combined because they are often used together.
- Would increase the burden on HAs to check the qualifications of operatives were appropriate for the type of work being undertaken at each stage of the process.
- Already difficult when operatives don't have hot laying qualifications, further dilution of qualifications would be unworkable.
- More disaggregation and a more specialist workforce will lead to more delays waiting to get the right people on site.
- Individual unit accreditation would increase costs and complexity of registration and administration,
- Broad qualifications are helpful with regard to assisting career progression for operatives.
- This has already been considered by the Training and Accreditation Working Group but was dismissed as unworkable

Q8) Do you agree that the regulations should be amended to allow operatives and supervisors to be reassessed on their units earlier than six months before their expiry date, if they choose to do so?

Category (number of responses)	Yes	No
Local Government (38)	18	20
Utility (18)	18	0
Training providers (6)	4	2
Other (22)	15	7
Total responses (84)	55	29

Comments made in support of flexibility in early reassessment:

- More flexibility in early reassessment would encourage more regular training if a company/operative felt it was needed. Would allow efficiency in timing training with seasonal quiet periods (or quiet periods for other reasons).
- Would allow for easier management of training of employees within teams, providing greater opportunities for bulk purchasing and for spreading out absences. If someone has had a long period without working but their qualifications are in date this would make it easier for them to justify re-training.
- Would need to ensure that the new 5-year period ran from the reassessment time, not the end of the original qualification.
- Some flexibility should be allowed on a case by case basis where there are extenuating circumstances, but not complete removal of the 6 month window.
- If changed reassessment shouldn't be allowed more than 12 months early.
- It would seem reasonable for the interval between which reassessment could be extended to be extended to no longer than a year before expiration and 8 months after. This should ensure appropriate flexibility to schedule in reassessment around projects whilst ensuring that a lag in assessment does not unduly impact on maintaining professional standards.

Comments made against early re-assessment:

- See no benefit.
- 6 months is adequate. It maintains consistency with Wales.

Q9) Do you agree that the regulations should be amended to end the need for operatives and supervisors who have missed their reassessment 'window' to be assessed from scratch?

Category (number of responses)	Yes	No
Local Government (40)	13	27
Utility (18)	16	2
Training providers (6)	3	3
Other (21)	6	15
Total responses (85)	38	47

Comments made in support of revision to the 6 month after window / requirement for full reassessment:

- There is no need for time limit. If you're out of the industry for a long time you won't pass reassessment without training.
- The window shouldn't be open ended but the 6 months could be extended. Suggestions longer reassessment periods: 6 months but with allowance for extenuating circumstances, 8 months, 12 months 2 years, 3 years, 5 years to align with Scottish proposals.
- So long as the operative or supervisors can show supporting evidence that they can meet required standards then it is reasonable for them not to be reassessed from scratch. It may be possible to manage this though the development of 'self certification schemes' that can vouch for skills retention avoiding full reassessment. Assessment would still be required.
- It would be beneficial to allow previously registered individuals to demonstrate their competence through the reassessment at any point following the expiry of their previous registration and if successful they could register their reassessed Certificates.
- There is no evidence to suggest that individuals are any less competent six months plus one day following expiry of previous registration. Individuals in this situation should be provided with the opportunity to demonstrate their competency through the reassessment process and register these certificates.

Comments made in opposition to extending or removing the window for re-assessment:

- There would be no incentive to stay up to date. This would lead to people working unqualified until they are caught out by inspectors.
- This would result in abuse and failure to comply with qualifications regulations.
- 6 months is adequate. It maintains consistency with Wales.

Q10) Do you have any further simplifications you would suggest for the regulations? What problem would they solve?

The following comments in support of simplification of the regulations were made under Q10 or elsewhere:

- Revisions to reassessment timing/remove need to reassess:
 - Reassessment should be required only when there are updates to equipment or practices not a fixed 5 year window.

- Revision to reassessment content:
 - The current requalification process does not add value to individuals or their employers.
 - Reassessment of operatives should concentrate on practical skills, with only supervisors being tested on the application of the specification.
- Support for revisions to the qualification/reassessment processes:
 - A better and more cost effective registration system could be introduced.
 - The date of registration should be the date the test was passed not the date SWQR receive the application.
 - The SWQR receives a file of unit results from each awarding body to validate candidates' registration applications, it would be easier if this was acceptable as the legal evidence of successful completion of a Certificate of Competency (rather than a hardcopy of the reassessment certificate). It would greatly speed up the registration process.
 - Allow registration of qualifications obtained in the past, not just within 1 month of taking them (keeping the 5 year validity from original qualification date).
- Support for the introduction of more flexibility in approach within statutory framework:
 - Having flexibility will allow operatives to focus on specific areas of training that they require as not all operatives require the same levels / modules of training. All training requirements / programmes still need to be produced via the training and accreditation working group, to ensure standardisation and compliance with the specifications and code of practices to ensure consistency.

The following comments were made in opposition to amendment of the regulations:

- Support for reassessment/5-year timing:
 - Candidates coming in for reassessments are often a poor standard and refresher or full retraining is often needed showing insufficient training is carried out by the sector.
 - In the utility and construction sector 5 year renewal for registration schemes is quite common so to use something dramatically different would contradict what is already accepted.
 - It is too early to assess the effectiveness of reassessment as it's only just been brought in.
- Revision to reassessment content:
 - The current requalification process does not add value to individuals or their employers.
 - The regulations are fine it's the course content that needs improving.

The following comments were made in favour of strengthening the existing requirements:

- The existing training requirement should be revised to become a NVQ type award. An operative/supervisor should gain his accreditation through evidence of working practice rather than 5 days of intense training and guided assessment.
- Training requirements should be extended to HA workforce not just the utilities.
- Everyone on site should have core safety training not just a minimum of one operative on site.
- Everyone involved in excavations should be fully accredited.

- A driving licence points system should be added to the national qualification register - workmen could lose qualifications (for poor reinstatement or safety standards) in the same way drivers lose their driving licence.

Part 4: Consultation responses to questions on the use of a Legislative Reform Order (LRO)

The following responses were given to questions 15-21 in the consultation document. This section of the consultation dealt with the proposal that the Government could use an LRO to repeal the street works qualification. An LRO is a way of changing primary legislation, but it has certain conditions attached as it is not subject to the same scrutiny by Parliament as a Bill. The questions below probed each of these conditions.

Q15) Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?

Category (number of responses)	Yes	No
Local Government (38)	0	38
Utility (15)	1	14
Training providers (5)	2	3
Other (22)	4	18
Total responses (80)	7	73

Q16) Are the proposals put forward in this consultation document proportionate to the policy objective?

Category (number of responses)	Yes	No
Local Government (35)	6	29
Utility (13)	2	11
Training providers (4)	1	3
Other (16)	2	14
Total responses (68)	11	57

Comments provided indicate that this is a widely held view that the risks of reduced quality of workmanship or reduced safety were too great to warrant the increased flexibility gained by deregulating qualifications.

Q17) Do the proposals put forward in this consultation document taken as a whole strike a fair balance between the public interest and any person adversely affected by it?

Category (number of responses)	Yes	No
Local Government (38)	6	32
Utility (16)	1	15
Training providers (5)	1	4
Other (18)	5	13
Total responses (77)	13	64

Respondents stating that a fair balance has not been struck gave one, or more, of the following comments:

- That the net benefit, calculated in the Impact Assessment as at total net present value of £11.4m, is too small compared to the cost of maintaining the highway to justify the risk of any reduction in standard.
- That safety is the prime concern and the risk of a reduction in safety standards is too significant.
- The proposals do not provide an overall benefit to public, mainly due to concerns that workmanship and safety standards will reduce.

Q18) Do the proposals put forward in this consultation document remove any necessary protection?

Category (number of responses)	Yes	No
Local Government (35)	30	5
Utility (15)	13	2
Training providers (5)	2	3
Other (19)	18	1
Total responses (74)	63	11

Comments provided to support the belief that a necessary protection would be removed were dominated by the view that removing the regulations would compromise safety (of the workforce and the road user). This is supplemented by a commonly held view that it would remove HAs' ability to protect the highway from poor workmanship. A contrasting argument was also put forward that the regulations protect the utilities and their contractors from varying HA demands for qualifications.

Q19) Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise?

Category (number of responses)	Yes	No
Local Government (31)	2	29
Utility (7)	1	6
Training providers (3)	0	3
Other (13)	4	9
Total responses (54)	7	47

The respondents who stated that a right or freedom would be impinged generally stated that highway users/the general public have a right to expect the condition of the road network to be safe at all times.

Q20) Do you consider the provisions of the proposal to be constitutionally significant?

Category (number of responses)	Yes	No
Local Government (34)	12	22
Utility (7)	0	7
Training providers (3)	1	2

Other (13)	3	10
Total responses (57)	16	41

No comments indicated how the constitution would be affected. Few of the 'yes' responses gave any explanation as to why the proposals were considered constitutionally significant. Those that did state either the change would affect the whole country or that this would be a significant change to the NRSWA.

Q21) Do you agree that the affirmative resolution procedure should apply to the scrutiny of this proposal, if it were to be taken forward by means of an LRO?

Category (number of responses)	Yes	No
Local Government (28)	27	1
Utility (10)	10	0
Training providers (2)	1	1
Other (16)	15	1
Total responses (56)	53	3

Where comments were provided there was a consistently held view (in support of both 'yes' and 'no') that a parliamentary debate should be held on these proposals. The three respondents opposed to an affirmative resolution procedure gave comments indicating that they oppose the LRO route and the proposals in general.