



Department
for Transport

CONSULTATION REPORT

March 2016

Proposed amendments to street works
qualifications legislation in England

Moving Britain Ahead

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
General enquiries <https://forms.dft.gov.uk>
Website www.gov.uk/dft

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Introduction

- 1 This report should be read in conjunction with the corresponding consultation document, available at <https://www.gov.uk/government/consultations/street-works-qualifications-regulations-in-england-proposed-amendments>.
- 2 On 2 September 2015, the Department began an 8-week public consultation on proposals to improve and simplify The Street Works (Qualifications of Supervisors and Operatives) (England) Regulations 2009 as amended. The consultation ended on 28 October 2015.
- 3 The consultation asked for views on seven particular areas in the regulations where we proposed changes. It also included an eighth question inviting general comments on a number of miscellaneous issues considered to be relevant such as potential financial impacts etc.
- 4 There were 25 responses in total, two of which provided comments but did not answer the questions. The responses are broken down as shown here:

Type of organisation	Number who responded
Utility companies	13
Highway authorities	3
Scottish Road Works Commissioner	1
Training organisations	2
Awarding organisations	2
Contractors	2
JAG	1
NJUG	1
Total	25

- 5 This report does not include every comment - trivial comments and comments of support are generally omitted, for example. The responses are summarised for each question in the next chapter.

1. Proposals, feedback and recommendations

1 - General	
a)	Change the title of the regulations so that "Operatives" comes before "Supervisors".
b)	Change the order that operatives and supervisors are covered in the body of the regulations and in the schedules.

Purpose: Self explanatory

23 YES answers, 0 NO answers.

Recommendation: Proposed change to be implemented.

2 - Regulations 4(1)(a), 5(1)(a), 10(3) and 10(4)	
a)	Delete "the supervisor with" in regulation 4(1)(a).
b)	Delete "the trained operative with" in regulation 5(1)(a).
c)	Delete "that supervisor with" in regulation 10(3).
d)	Delete "that trained operative with" in regulation 10(4).

Purpose: To remove the need to issue physical certificates directly to candidates. The change would legitimise actual practice where certificates are sometimes issued to assessment centres who pass them on to the operative, or to third parties such as the operative's employer. Certificates could still be issued directly to supervisors or operatives but doing so would no longer be a legal requirement.

22 YES answers, 1 NO answer.

2 comments pointing out that operatives and supervisors need to be able to demonstrate that they are qualified.

DfT response: Agreed, but we consider that street works cards are generally used to perform this function, not certificates.

1 comment that candidates will in future have to state where any certificate is to be sent.

DfT response: We consider that the default position would be to issue certificates to the candidates as happens now.

1 comment about ownership of the certificate and doubt about the need for the change.

DfT response: The certificate will still belong to the candidate, demonstrating that he has achieved the stated qualifications which will, in turn, be reflected on his street works card.

Recommendation: Proposed change to be implemented.

3 - Regulation 10(1)	
a)	Amend the wording so that the five year life of an original certificate runs from the date the candidate was assessed as having passed the exams instead of "the date of registration".
b)	Exclude certificates of recognition from this change. They would continue to be based on the date of registration.

Purpose a): To start the life of each certificate on a more meaningful date than its date of registration.

Purpose b): To leave certificates of recognition as they are.

21 YES answers, 2 NO answers.

2 comments on 3a from awarding organisations, stating that using assessment dates would pose problems because they are not always known to the awarding organisation. They suggested that the date of certification is more appropriate as it is always known and will not require any changes to administrative procedures.

1 comment on 3b saying certificates of recognition should be treated the same as certificates of competence. This was also suggested internally.

DfT response: Agreed. The proposals consulted on will be modified so that original certificates will start from the date of certification and that certificates of recognition will be similarly treated.

Recommendation a): Proposed change to be implemented except that certificates will run from the date of certification, not reassessment.

Recommendation b): Proposed change above to now include certificates of recognition.

4 - Regulation 10(2)	
a)	Change the wording so that renewal of a certificate of competence for a further successive period of five years is related to the date of "being reassessed by an approved assessment centre as having achieved the certificate of competence" instead of the date of "application for registration". (Certificates of recognition will continue to be based on the date of receipt of the registration application.)

- | | |
|----|---|
| b) | Bring forward the current 12 month successive renewal window by 6 months so that the window runs from 12 months before expiry to actual expiry. |
| c) | Remove the requirement for an application to register a successful reassessment to be "accompanied by the relevant reassessment certificate of competence". |

Purpose a): To start the life of each certificate on a more meaningful date than its date of registration while leaving certificates of recognition unchanged.

Purpose b): This is part of the new certificate renewal regime to give candidates more flexibility to renew certificates when they want to.

Purpose c): To remove inconsistency between procedures for processing new and reassessed qualifications. It will also help reduce processing time for reassessments.

21 YES answers, 2 NO answers.

2 comments on 4a that repeated comments on 3a above, that we agree with.

3 comments on 4b expressed concern over removing the after-expiry renewal window.

DfT response: The proposed changes mean that there would still be a post-expiry renewal window but qualifications renewed after expiry would re-commence from the date of certification. Current regulations mean that the start of a certificate renewed up to 6 months after expiry is back-dated to the expiry date. As a candidate is not qualified during the period between expiry and renewal, this serves no purpose. The proposed changes will allow a certificate renewed after expiry to start from the date of certification so the candidate is qualified for a full 5 year period from then.

1 comment on 4b suggested merging this successive renewal window with 5b below (which is for renewal in years 1 to 4 of the certificate).

DfT response: This can be considered at the drafting stage as it is simply a matter of wording in the regulations. It would not have any practical effect on the proposals.

1 comment on 4c expressed concern over the ability of authority staff to detect fraud.

DfT response: Any application to renew a certificate would still require proof that the certificate has been awarded but it would be done electronically (as it is currently done for original certificates). In any case, authority staff checking individuals on site examine their street works cards that are usually used as proof of qualifications held rather than certificates.

Recommendation a): Proposed change to be implemented except that certificates will run from the date of certification, not reassessment. In addition, proposed change above will now include certificates of recognition.

Recommendation b) and c): Proposed changes to be implemented.

5 - New regulations for improved flexibility

- a) Allow candidates to renew a certificate by reassessment up to 5 years after it has expired. The renewed certificate would last for five years from the date of reassessment.
- b) Allow candidates to renew a certificate by early reassessment anytime in the first 4 years of a certificate's life. The renewed certificate would last for 6 years from the date of reassessment.

Purpose: This is part of the new certificate renewal regime that when taken as a whole, will give candidates far more flexibility to renew certificates when they want to.

20 YES answers, 3 NO answers.

2 comments saying that allowing reassessment 5 years after expiry is/might be too long.

2 comments suggesting candidates should re-sit the original exams as opposed to being reassessed, if renewing after expiry.

DfT response: These comments reflect two common concerns about allowing such a length of time after expiry for a candidate to be eligible to renew via reassessment. One is that the candidate's knowledge might be out of date - the other that his knowledge might be insufficient after such a period. However, if his knowledge is either out of date or insufficient, he will not be capable of passing reassessment and will have to complete a further course in order to qualify.

1 comment observing that the proposed arrangements would allow supervisors and operatives to be reassessed at around the same time.

DfT response: True, but there would be no change in this respect. There is nothing in the existing regulations that prevents supervisors and operatives from being reassessed at the same time.

1 comment expressing concern over the need for certificates to record the date of expiry and the change in the awarding bodies' processes this would involve.

DfT response: Certificates will not be required to record the date of expiry. All adjustments to expiry dates will be handled by the street works register and these dates will be reflected on the street works cards.

1 comment on the view that operatives might think they can renew anywhere within a 9 year window.

DfT response: For a certificate to remain current throughout, the longest period possible between gaining an original certificate and renewing it will be 5 years, and the longest period between certificate renewals will be 6 years. The 6 year period is only possible for candidates who reassess prematurely, i.e. over a year before the certificate expires. This will be made clear.

Recommendation a): Proposed changes to be implemented except that the renewed certificate will last for 5 years from the date of certification, not reassessment.

Recommendation b): Proposed changes to be implemented except that the renewed certificate will last for 6 years from the date of certification, not reassessment.

6 - Simplification of street works certificates

- | | |
|----|---|
| a) | Rationalise the system of units and certificates of competence (see Annex A). |
| b) | Make acquiring certificates in "Signing, lighting and guarding" and "Location and avoidance of underground apparatus" a requirement for any other certificate to be valid. (New regulation to restate an existing requirement). |
| c) | Dispense with separate schedules for original certificates and reassessment certificates. |

Purpose a): Self-evident.

Purpose b): To carry an existing requirement through to the new system.

Purpose c): To simplify the schedules. Separate schedules for original and reassessed certificates are considered unnecessary because they both have the same status in practice.

22 YES answers, 1 NO answer.

1 comment about the new operative and supervisor certificates in *Location and avoidance of underground apparatus* (certificates O2 and S2 respectively) saying that as they are exactly the same with regard to content and assessment, there should be a common *Location and Avoidance* certificate for operatives and supervisors.

DfT response: This point has also been made outside of the consultation and we accept it. We have therefore decided to replace the originally proposed "O2" and "S2" certificate codes with a single code, namely "LA". The certificate codes will therefore be as follows:

LA - Location & avoidance of underground apparatus

O1 - Signing, Lighting and Guarding

O2 - Excavation

O3 - Reinstatement and compaction of backfill materials

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

O5 - Reinstatement in cold-lay bituminous materials

O6 - Reinstatement in hot-lay bituminous materials

O7 - Reinstatement of concrete slabs

O8 - Reinstatement of modular surfaces, concrete footways

S1 - Monitoring Signing, Lighting and Guarding

S2 - Monitoring excavation

S3 - Monitoring reinstatement and compaction of backfill materials

S4 - Monitoring reinstatement sub-base and base in non-bituminous

S5 - Monitoring reinstatement in bituminous materials

S6 - Monitoring reinstatement of concrete slabs

S7 - Monitoring reinstatement of modular surfaces, concrete footways

1 comment disagreeing with the proposal to dispense with separate schedules for original certificates and reassessment certificates. The argument is that while initial assessment involves the comprehensive assessment of knowledge through questioning and observation of practical skills, the reassessment process is based around multiple-choice testing.

DfT response: It is recognised that the procedures for assessment and reassessment are quite different. However, in practice, there is no difference in the status of the resulting certificates - their legal status, certificate life, and the work that can be carried out under them will be the same.

Recommendation: Proposed changes to be implemented except for a minor change to certificate coding.

7 - FRS exemption

Introduce an explicit exemption from the regulations for the Fire and Rescue Services.

Purpose: To dispense with the need for fire crews to have at least one member of the team qualified in Signing, Lighting and Guarding when checking hydrants.

13 YES answers, 10 NO answers.

3 comments agreeing to the proposal provided that the exemption was for hydrant checking only.

DfT response: The proposal was to exempt the FRS altogether on the assumption that it would be unlikely that they would do anything other than hydrant checking. However, one comment in particular from a water company informed us that the FRS had approached them with a view them undertaking the maintenance of hydrants in addition to checking them. We therefore accept the view that any exemption should be limited to checking fire hydrants.

9 comments were received disagreeing with the proposal. The arguments against exemption were generally along the line: *As the risks involved during work on hydrants are no different from those arising from utility works, FRS should be qualified to the same degree as others are required to be when carrying out street works.*

DfT response: In the light of the previous comments, the proposal would be modified to limit any exemption to hydrant checking. We do not agree with the above comments on the similarity of risks because this activity does not require the street to be broken up whereas most utility works do. In addition, the nature of hydrant checking means that almost invariably, the works would be of short duration. Although there may be some similarities between FRS works and utility works, those same similarities exist between FRS works and highway authority works, and there is no requirement for highway authority contractors to obtain qualifications in SLG. An exemption would not mean that FRS can use untrained personnel. Like highway authority contractors, the FRS would need to ensure their staff were appropriately trained. The *Safety at Street Works and Road Works Code of Practice* (which the FRS must comply with) says on page 9:

Only appropriately trained and competent operatives, supervisors, managers or other competent persons should be engaged in the assessment, design, setting up, maintaining and removing of signing, lighting, guarding and temporary traffic control.

However, instead of training for the whole gamut of street works situations, most of which will never be needed by the FRS, the training can be better tailored to hydrant checking activities. As a result, it might become cheap enough to train a number of fire officers on hydrant checking for the same cost as putting a single utility operative through a full SLG course. The proposal could therefore reduce costs while improving safety through a larger number of FRS personnel being trained.

Recommendation: Proposed change to be implemented except the exemption will be limited to hydrant checking.

8 - Request for additional information

We would welcome any further information you might want to provide about financial or other impacts that the changes could have on you or your organisation, including supporting evidence wherever possible.

Please also suggest any practical enforcement or implementation issues, and any possible unintended consequences of the proposed changes.

Purpose: To provide an opportunity to make miscellaneous comments. In some cases, comments duplicated the question-specific comments made by others and are therefore not included here. Some of the comments received have been edited slightly for clarity.

Comment 1 It should be made compulsory for the individual to carry the card for inspection at all times and not held by the employer

DfT response: Street works cards are outside of these regulations and we have no plans to include them.

Comment 2. The timeframe for implementing any proposed consultation changes needs to provide a transitional period to allow for budgets to be reconsidered for training allocation that may have already been set for the next financial period.

DfT response: The proposed changes should have no effect on training budgets - the amount of training required overall will be exactly as it is now. The proposed system has been devised to be perfectly compatible with the current one to help ensure a smooth transition from one to the other.

Comment 3. We feel there will be minimal impact as long as current certificates are allowed to naturally expire.

DfT response: There will be no loss of certificate life for existing qualifications.

Comment 4. a) There may be confusion with the proposed new certificates as traditionally Unit 1 has always been 'Location and Avoidance of Underground Apparatus', whereas now O1 and S1 will relate to 'Signing, Lighting and Guarding'.

b) Regulation 5 early reassessment up to twelve months in advance of expiry is better however our interpretation allowing renewal up to five years after expiry would mean they could effectively leave the industry for a period of time, return to a desktop refresher and reassessment to be deemed competent thus potentially meaning only two training/assessment interventions in a fifteen year period.

c) Our assumption is that during the five years after expiry period above, that if they were to continue working in the industry they would effectively be unqualified and therefore could only work in a team with another qualified operative as now with the six month process

DfT response: a) We do not see this as a source of confusion. The change is required because SLG is the very minimum an operative or supervisor must hold to be qualified. It is therefore logical to number SLG as the first certificate in each of the O and S groups, i.e. certificates O1 and S1.

b) Under the proposed system, it would not be possible for someone to have "only two training/assessment interventions in a fifteen year period" and remain qualified throughout. It is worth noting that anyone returning to the industry after some time needs to have retained sufficient former knowledge to be able to pass a reassessment. Otherwise, they will not pass.

c) That is correct but it is no different from the current situation. Over the years a misunderstanding has arisen that the current 6 month post-expiry window is a grace period for working unqualified. It is not and never has been.

Comment 6 Any changes to legislation that are not mirrored across the Devolved Administrations will add an additional financial burden to industry, assessment centres and Awarding Organisations as they would need to maintain a minimum of two or possibly up to four different systems and qualification structures.

DfT response: We have kept the Devolved Administrations informed throughout this process with a view to maintaining consistency across the UK. We hope that duplication in certificate types will only be temporary and that the end result will be a more logical system for all of the UK.

Comment 7 We recognise that such issues are a devolved matter in Wales, and that in Wales reassessment has not been introduced. Do the proposed changes in England have any further impact on the ability of personnel to work across borders? For example, it is presently understood that personnel who have not been through a reaccreditation process cannot work in England (other than the qualification period of 5 years after having completed the full training package for the first time, or subsequent periods of 5 years where they have completed the full training package) but that personnel who have been reaccredited in England can work in Wales. Is the latter still the case where personnel have regained their qualification in England via reaccreditation up to 5 years after the expiry of their original qualification? We would also like further clarity on what qualifications an authority inspector must/should have when inspecting and potentially issuing defects on an undertaker's site.

DfT response: There will be no change to the situation you have described with regard to Welsh personnel working in England. We plan to insert a regulation giving any equivalent certificate under the current system outside of England the same status as the corresponding English certificate. It will be a matter for the Devolved Administrations if they choose to do the same for the sake of cross-border parity in both directions. With regard to qualifications for an authority inspector, such qualifications are outside of the scope of s67 of NRSWA under which the regulations are made. There is therefore no legislative requirement for inspectors to be qualified (although it would be good practice).

Comment 9 a) JAG(UK) welcomes the proposed changes contained within the document but would stress that key to this is the ease with which an Authority can monitor and enforce the principles. JAG(UK) does have concerns that, currently, systems are not sufficient to ensure that is the case. JAG(UK) hopes the industry will ensure all Supervisors are fully competent and certificated to cover all aspects of Street Works. A problem with enforcement may arise if different levels of certification for Supervisors are adopted by the Undertakers. JAG(UK) notes that Custom and Practice has usually been that Supervisors carry all Units but will these proposals offer a limited competence by just carrying some of the Units?

b) JAG(UK) also questions whether or not the Regulations should differentiate between non-registerable and registerable activities?

c) Of greater concern, however, is that of the influx of foreign labour into the Street Works Industry and the ability to audit their training and accreditation standards and as part of the proposed changes, JAG(UK) would like some wording that will help in dealing and controlling with this ever increasing area of difficulty: this is particularly pertinent where Operatives are unable to speak or read English which in itself would become a safety issue.

DfT response: a) The proposed changes, if anything, should make monitoring and enforcement easier. While a policy of requiring supervisors to be fully qualified is welcome, it is an internal matter for utility companies. There is no current requirement for this to be the case and the proposed changes will have no effect in this regard.

b) There is no intention of differentiating between non-registerable and registerable activities in the regulations.

c) Three of the awarding bodies, CABWI, City and Guilds, and SQA, have jointly agreed on a policy of insisting assessments take place using English. They also have procedures in place for dealing with invalid certificates. The issue has been discussed in the HAUC Training and Accreditation Group to ensure that current and future new entrant awarding bodies are made aware of this requirement.

Recommendation: None - the responses to the request for additional information in Question 8 did not require any further changes to the consultation proposals.

2. Summary of recommendations

1 - General	
a)	Change the title of the regulations so that "Operatives" comes before "Supervisors".
b)	Change the order that operatives and supervisors are covered in the body of the regulations and in the schedules.

Recommendation: Proposed change to be implemented.

2 - Regulations 4(1)(a), 5(1)(a), 10(3) and 10(4)	
a)	Delete "the supervisor with" in regulation 4(1)(a).
b)	Delete "the trained operative with" in regulation 5(1)(a).
c)	Delete "that supervisor with" in regulation 10(3).
d)	Delete "that trained operative with" in regulation 10(4).

Recommendation: Proposed change to be implemented.

3 - Regulation 10(1)	
a)	Amend the wording so that the five year life of an original certificate runs from the date the candidate was assessed as having passed the exams instead of "the date of registration".
b)	Exclude certificates of recognition from this change. They would continue to be based on the date of registration.

Recommendation a): Proposed change to be implemented except that certificates will run from the date of certification, not reassessment.

Recommendation b): Proposed change above to now include certificates of recognition.

4 - Regulation 10(2)

- a) Change the wording so that renewal of a certificate of competence for a further successive period of five years is related to the date of "being reassessed by an approved assessment centre as having achieved the certificate of competence" instead of the date of "application for registration". (Certificates of recognition will continue to be based on the date of receipt of the registration application.)
- b) Bring forward the current 12 month successive renewal window by 6 months so that the window runs from 12 months before expiry to actual expiry.
- c) Remove the requirement for an application to register a successful reassessment to be "accompanied by the relevant reassessment certificate of competence".

Recommendation a): Proposed change to be implemented except that certificates will run from the date of certification, not reassessment. In addition, proposed change above will now include certificates of recognition.

Recommendation b) and c): Changes to be implemented as proposed.

5 - New regulations for improved flexibility

- a) Allow candidates to renew a certificate by reassessment up to 5 years after it has expired. The renewed certificate would last for five years from the date of reassessment.
- b) Allow candidates to renew a certificate by early reassessment anytime in the first 4 years of a certificate's life. The renewed certificate would last for 6 years from the date of reassessment.

Recommendation a): Changes to be implemented as proposed except that the renewed certificate will last for 5 years from the date of certification, not reassessment.

Recommendation b): Changes to be implemented as proposed except that the renewed certificate will last for 6 years from the date of certification, not reassessment.

6 - Simplification of street works certificates

- a) Rationalise the system of units and certificates of competence (see Annex A).
- b) Make acquiring certificates in "Signing, lighting and guarding" and "Location and avoidance of underground apparatus" a requirement for any other certificate to be valid. (New regulation to restate an existing requirement).
- c) Dispense with separate schedules for original certificates and reassessment certificates.

Recommendation: Changes to be implemented as proposed except for a minor change to certificate coding.

7 - FRS exemption

Introduce an explicit exemption from the regulations for the Fire and Rescue Services.

Recommendation: Change to be implemented as proposed except the exemption will be limited to hydrant checking.

Annex A

List of respondents to the consultation

Ref No	Organisation
1	London Borough of Havering
2	Construction & Plant Assessments Ltd, training provider
3	Wessex Water Services
4	Southern Water
5	Bristol Water plc
6	Balfour Beatty
7	Southwestwater.co.uk
8	Western Power Distribution
9	Openreach
10	Transport for London
11	National Grid
12	Leeds City Council
13	Kier Services
14	Affinity Water Ltd
15	Water skills, training provider
16	NJUG
17	CABWI - Awarding Organisation
18	SQA - Awarding Organisation
19	United Utilities
20	Wales & West Utilities Limited
21	Electricity North West
22	JAG(UK)
23	United Utilities
24	Scottish Road Works Commissioner
25	Severn Trent Water