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STATUTORY INSTRUMENTS

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**2004 No. 129**

**The Cableway Installations Regulations 2004**

**PART III**

*Authorisation Procedures and Notified Bodies*

**Authorisation by the Secretary of State**

**13.**—(1) The Secretary of State shall authorise (or refuse to authorise) works for the construction or modification of cableway installations in accordance with this Part.

(2) An authorisation given paragraph 1 shall be a stage 1 authorisation.

(3) The Secretary of State shall authorise (or refuse to authorise) the putting into service of cableway installations in accordance with this Part.

(4) An authorisation given under paragraph (3) shall be a stage 2 authorisation.

**Notified bodies**

**14.** For the purpose of these Regulations a notified body is a body which has been appointed to carry out one or more of the conformity assessment procedures and which has been—

- (a) appointed by the Secretary of State as a notified body for the purpose of these Regulations and notified to the Commission and other Member States pursuant to regulation 15; or
- (b) appointed by a Member State other than the United Kingdom and notified by the Member State concerned to the Commission and the other Member States pursuant to Article 16(1) of the Cableway Installations Directive;

**Notified bodies appointed by the Secretary of State**

**15.**—(1) The Secretary of State may from time to time appoint such persons as he thinks fit to be notified bodies for the purposes of these Regulations.

(2) The Secretary of State shall not appoint any person as a notified body unless he is satisfied that that person will be capable of meeting the minimum criteria for such persons specified in Schedule 8.

(3) The appointment of a notified body—

- (a) may relate to all descriptions of cableway installations, subsystems or safety components or such descriptions (which may be framed by reference to any circumstances whatsoever) of cableway installations, subsystems or safety components as the Secretary of State may from time to time determine; and
- (b) may be made subject to such conditions as the Secretary of State may from time to time determine, and such conditions may include conditions which are to apply upon or following termination of the appointment.

(4) Subject to paragraphs (5) and (6) below, the appointment of a notified body may be for such period as may be specified in the appointment.

- (5) The appointment of a notified body shall terminate—
  - (a) at the expiry of any period specified in the appointment pursuant to paragraph (4);
  - (b) upon the expiry of 90 days' notice in writing given by the notified body to the Secretary of State, or
  - (c) on any date specified for the termination of the appointment in accordance with paragraph (6), whichever is the earliest.
- (6) If at any time it appears to the Secretary of State that—
  - (a) any of the conditions of the appointment of a notified body are not being complied with; or
  - (b) a notified body is no longer meeting the minimum criteria specified in Schedule 8,the Secretary of State may, by notice in writing to that body, specify a date on which the appointment of that person as a notified body shall terminate.
- (7) Where the Secretary of State is minded to terminate the appointment of a person as a notified body pursuant to paragraph (6) he shall—
  - (a) give notice in writing to the notified body of the reasons why he is minded to do so;
  - (b) give the notified body the opportunity to make representations within a period of 14 days beginning with the day on which such notice is given; and
  - (c) consider any representation made within that period by the notified body before making his decision.
- (8) If for any reason the appointment of a notified body is terminated under this regulation, the Secretary of State may—
  - (a) give such directions as the Secretary of State shall consider appropriate, either to the notified body whose appointment is to be terminated or to another notified body, for the purpose of making such arrangements as may be necessary or expedient for the determination of any matters which would, apart from termination, have fallen to be determined by the body whose appointment is to be terminated; and
  - (b) without prejudice to the generality of the foregoing, authorise another notified body or any person carrying out the functions of a notified body in another Member State, to take over the functions of the body whose appointment has terminated, in respect of such matters as the Secretary of State may specify.
- (9) The Secretary of State shall notify in writing the Commission and other Member States of the appointment or termination of appointment, as the case may be, of a notified body.

## **Fees**

- 16.**—(1) Subject to paragraph (2) a notified body may charge such fees in connection with, or incidental to, carrying out its duties in relation to its functions as it may determine.
- (2) The fees charged pursuant to paragraph (1) shall not exceed the sum of the following—
- (a) the sum of the costs incurred or to be incurred by the notified body in carrying out the relevant work on behalf of the person commissioning the work; and
  - (b) an amount on account of profit which is reasonable in the circumstances having regard to—
    - (i) the character and extent of the work done or to be done by the notified body on behalf of the person commissioning the work, and
    - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(3) The Secretary of State may charge such reasonable fee in connection with, or incidental to, carrying out its functions under regulations 17 and 18 as he may determine.

(4) The power in paragraphs (1) and (3) includes the power to require the payment of a fee or a reasonable estimate of the fee, in respect of the work commissioned in advance of carrying out that work.

### **Application for a stage 1 authorisation**

**17.**—(1) An application for a stage 1 authorisation in respect of the construction or modification of a cableway installation shall be made by the main contractor.

(2) An application for a stage 1 authorisation shall be—

- (a) made in writing to the Secretary of State;
- (b) accompanied by—
  - (i) the safety report;
  - (ii) the safety analysis; and
  - (iii) if applicable, a notification under paragraph (3).

(3) If the main contractor intends to incorporate into a cableway installation that he is constructing or modifying, a subsystem or safety component that has been designed or constructed using an innovative approach, the main contractor shall notify the Secretary of State of that intention with his application for a stage 1 authorisation.

(4) The notification made pursuant to paragraph (3) shall be accompanied by—

- (a) a description of the innovative approach;
- (b) a description of how the design is to be tested to ensure that the subsystem or safety component, as the case may be, is fit for its purpose; and
- (c) information demonstrating that the incorporation of a subsystem or safety component designed or constructed using the innovative approach will achieve the same level of safety as a subsystem or safety component designed or constructed using a conventional approach.

(5) On receiving a notification under paragraph (3) the Secretary of State shall submit the information contained in that notification to the Executive.

(6) If the Executive considers that the information provided under paragraph (5) is insufficient to enable it to decide whether or not special conditions should be imposed under paragraph (8) the Executive shall notify the main contractor in writing of the additional information that is required in order for it to undertake that decision.

(7) On receiving a notification under paragraph (6), the main contractor shall provide the Executive with such of the additional information specified in that notification as the main contractor is reasonably able to supply and, where any of the additional information so specified is not provided, a written explanation as to why the main contractor is unable to provide that information.

(8) If the Executive considers that the incorporation into a cableway installation that is being constructed of a subsystem or safety component that has been designed or constructed using an innovative approach is likely to affect adversely the safety of that installation when it is in operation, the Executive may impose special conditions in relation to—

- (a) the incorporation of that subsystem or safety component into that installation; or
- (b) the construction of that installation.

(9) In relation to the modification of a cableway installation, references in this regulation to the “safety analysis” and “safety report” shall be construed as applying only to the modification of the cableway installation and its repercussions on the installation as a whole.

**Application for a stage 2 authorisation**

**18.**—(1) An application for a stage 2 authorisation in respect of the putting into service of a cableway installation shall be made by the operator.

(2) An application for a stage 2 authorisation shall be—

(a) made in writing to the Secretary of State; and

(b) accompanied by—

(i) the technical file, and

(ii) if applicable, a notification under paragraph (3).

(3) If the operator intends to put into service a cableway installation which contains a subsystem or safety component that has been designed or constructed using an innovative approach, the operator shall notify the Secretary of State of that intention.

(4) The notification under paragraph (3) shall be accompanied by the following information—

(a) a description of the innovative approach;

(b) a description of how the design is to be tested to ensure that the subsystem or safety component as the case may be is fit for its purpose; and

(c) information demonstrating that the incorporation of a subsystem or safety component designed or constructed using the innovative approach will achieve the same level of safety as a subsystem or safety component designed or constructed using a conventional approach.

(5) On receiving a notification under paragraph (4) the Secretary of State shall submit the information contained in the notification under paragraph (4) to the Executive.

(6) If the Executive considers that the information provided under paragraph (5) is insufficient to enable it to decide whether or not special conditions should be imposed under paragraph (8) the Executive shall notify the operator in writing of the additional information that it requires in order for it to undertake that decision.

(7) On receiving a notification under paragraph (6), the operator shall provide the Executive with such of the additional information specified in that notification as he is reasonably able to supply and, where any of the additional information so specified is not provided, a written explanation as to why he is unable to provide that information.

(8) If the Executive considers that the incorporation into a cableway installation of a subsystem or safety component that has been designed or constructed using an innovative approach, is likely to affect adversely the safety of that installation when it is in operation, the Executive may impose special conditions in relation to the putting into service of that installation.

**Granting of stage 1 and stage 2 authorisations**

**19.**—(1) The Secretary of State may only give a stage 1 authorisation in respect of works for the construction or modification of a cableway installation if he is satisfied that when constructed or modified that installation is likely to comply with the essential requirements and to be safe.

(2) The Secretary of State may only give a stage 2 authorisation in respect of the putting into service of a cableway installation if he is satisfied that—

(a) the installation has been designed and constructed in such a way as to comply with the essential requirements;

(b) the installation into which the subsystems and safety components have been incorporated will be safe;

(c) the technical file is complete;

(d) any special conditions imposed in relation to its construction under regulation 17(8) have been complied with; and

(e) it complies with any measures specified in the safety report regarding risks to safety.

(3) The Secretary of State may give a stage 1 authorisation in respect of the construction or modification of an installation or a stage 2 authorisation in respect of the putting into service of that installation, subject to compliance with such conditions as appear to that body to be appropriate for the purposes of securing that the installation complies with the essential requirements and is safe.

(4) The Secretary of State shall consider any application for a stage 1 or stage 2 authorisation except where—

(a) the applicant has failed to make an application in relation to—

(i) a stage 1 authorisation that complies with regulation 17(2), or

(ii) a stage 2 authorisation that complies with regulation 18(2);

(b) he reasonably considers that the documents submitted to him in relation to carrying out his functions are not in a language appropriate for him to discharge his functions;

(c) the person making the application has not submitted with its application the amount of the fee which the Secretary of State requires to be submitted pursuant to regulation 16(3).

(5) In relation to the modification of a cableway installation, references in this regulation to the “essential requirements” shall be construed as applying only to the modification of the cableway installation and its repercussions on the installation as a whole.

#### **Secretary of State’s refusal to give an authorisation**

**20.** Where the Secretary of State is minded to refuse to give a stage 1 authorisation in respect of the construction or modification of a cableway installation or a stage 2 authorisation for the putting into service of a cableway installation he shall—

(a) give notice in writing to the applicant of the reasons why he is minded to do so; and

(b) give the applicant the opportunity to make representations within a period of 28 days of that notice being given and consider any such representations made by the applicant.

#### **Notified body’s refusal to indicate conformity**

**21.** Where a notified body is minded to refuse to take the appropriate action under the conformity assessment procedure to confirm that a safety component or subsystem is in conformity with the provisions of these Regulations it shall—

(a) give notice in writing to the applicant of the reasons why it is minded to do so; and

(b) give the applicant the opportunity to make representations within a period of 28 days of that notice being given and consider any such representations made by the applicant.

#### **Requirement on notified bodies to carry out functions**

**22.—(1)** Save as provided for in paragraph (2), where the responsible person or other interested person so requests in writing, a notified body shall carry out, in relation to a safety component or subsystem, the procedures and checks (including, where so provided as part of those procedures and checks, surveillance) required to ensure that the responsible person fulfils the obligations arising from the appropriate conformity assessment procedure.

(2) A notified body shall not be required to carry out the functions referred to in paragraph (1) above if—

- (a) the request relates to a safety component or subsystem of a description to which the appointment of that body under regulation 15 does not relate;
- (b) to do so would put that body in breach of a condition of appointment;
- (c) it reasonably considers that the documents submitted to it in relation to carrying out its functions are not in a language appropriate for it to discharge these functions;
- (d) the person making the application has not submitted with its application the amount of the fee which the body requires to be submitted pursuant to regulation 16(1); or
- (e) the body reasonably believes that, having regard to the number of applications made to it in relation to its appointment under these Regulations which are outstanding, it will be unable to commence the required work within three months of receiving the application.