
STATUTORY INSTRUMENTS

2018 No. 816

The Cableway Installations Regulations 2018

PART 4

Market surveillance and enforcement

Market surveillance authority

20. The Executive is designated as the market surveillance authority for the purposes of Regulation 2016/424/EU and RAMS in its application to subsystems and safety components.

Enforcement in Great Britain

21.—(1) The Executive must make adequate arrangements for the enforcement of the Regulatory Provisions in Great Britain and accordingly a reference to an “enforcing authority” in the provisions applied for the purposes of such enforcement by paragraphs (2) and (3) is to be construed as a reference to the Executive.

(2) Subject to paragraph (4), the provisions of the 1974 Act specified in paragraph (3) apply for the purposes of the enforcement the Regulatory Provisions as if they were health and safety regulations for the purposes of that Act, and any function of the Executive under those or any other provisions of the 1974 Act, under or in respect of health and safety regulations (including their enforcement) are exercisable as if the Regulatory Provisions were health and safety regulations for the purposes of that Act.

(3) The provisions of the 1974 Act are—

- (a) sections 19 to 22 (inspectors, improvement notices and prohibition notices);
- (b) section 23 (provisions supplementary to 21 and 22) and 24 (appeal against improvement or prohibition notice);
- (c) sections 25A (power of customs officers to detain articles and substances) and 26 (power to indemnify inspectors);
- (d) section 27 (obtaining of information) and section 27A (information communicated by the Commissioners of Customs and Excise);
- (e) section 33(1)(c) and (e) to (o), section 33(2) and sections 34 to 42 (provisions as to offences);
- (f) section 46 (service of notices);
- (g) section 48(1) to (3) (application to the Crown); and
- (h) Schedule 3A.

(4) A failure to discharge a duty placed on the Executive by the Regulatory Provisions is not an offence under section 33(1)(c) of the 1974 Act.

Enforcement in Northern Ireland

22.—(1) The Executive must make adequate arrangements for the enforcement of the Regulatory Provisions in Northern Ireland and accordingly a reference to an “enforcing authority” in the provisions applied for the purposes of such enforcement by paragraphs (2) and (3) is to be construed as a reference to the Executive.

(2) Subject to paragraph (4), the provisions of the 1978 Order specified in paragraph (3) apply for the purposes of the enforcement in Northern Ireland of the Regulatory Provisions as if they were health and safety regulations for the purposes of that Order, and any function of the Executive under those or any other provisions of that Order, under or in respect of health and safety regulations (including their enforcement) apply as if the Regulatory Provisions were health and safety regulations for the purposes of that Order.

(3) The provisions of the 1978 Order referred to in paragraph (2) are—

- (a) articles 21 to 24 (inspectors, improvement notices and prohibition notices);
- (b) articles 25 (provisions supplementary to articles 23 and 24) and 26 (appeal against improvement or prohibition notice);
- (c) article 27A (power of customs officers to detain articles and substances);
- (d) article 28 (power to indemnify inspectors);
- (e) article 29 (obtaining of information) and article 29A (information communicated by the Commissioners of Customs and Excise);
- (f) article 31(1)(c) and (e) to (i) and (k) to (o), article 31(2) and articles 32 to 39 (provisions as to offences);
- (g) articles 44(1) to (3) (application to the Crown); and
- (h) Schedule 3A.

(4) A failure to discharge a duty placed on the Executive by the Regulatory Provisions is not an offence under article 31(1)(c) of the 1978 Order.

Subsystems or safety components presenting a risk

23.—(1) This paragraph applies—

- (a) where the Executive has—
 - (i) required an economic operator to take corrective action in relation to a subsystem or safety component in accordance with paragraph 1 of Article 40 of Regulation 2016/424/EU; and
 - (ii) the economic operator has not taken adequate corrective action within the period prescribed by the Executive under that paragraph; or
- (b) the market surveillance authorities of another member State have—
 - (i) informed the Commission and other member States of measures taken in accordance with paragraph 4 of Article 40 of Regulation 2016/424/EU in relation to a subsystem or safety component; and
 - (ii) those measures are deemed justified in accordance with paragraph (7) of that Article.

(2) Where paragraph (1) applies, the Executive must serve a notice on any relevant economic operator—

- (a) prohibiting or restricting it from making the relevant subsystem or safety component available on the market; or
- (b) requiring it to withdraw or recall the subsystem or safety component from the market.

(3) A notice served under paragraph (2) must be in writing and must specify the date by which the economic operator must comply with it.

(4) Any notice served under paragraph (2) may be withdrawn by the Executive serving written notice on the economic operator.

(5) Where a notice has been served on an economic operator under paragraph (2), the economic operator must comply with it.

(6) A notice may not be served under paragraph (2) in relation to any subsystem or safety component in respect of which the Executive has served an improvement notice or prohibition notice under section 21 or 22 of the 1974 Act or the equivalent provision in 1978 Order where that notice remains in force.

(7) In this regulation a “relevant economic operator” means any economic operator who has placed or made available or who is proposing to place or make available on the market a subsystem of safety component in respect of which paragraph (1) applies.

Notices in relation to a cableway installation that is not safe

24.—(1) If the Executive is of the opinion that an authorised cableway installation that has been put into service in accordance with its intended purpose is not safe, the Executive may serve a notice on the operator to prohibit the use of or to impose conditions of operation in relation to that cableway installation.

(2) A notice served under paragraph (1) must contain the following information—

- (a) a statement that the Executive is of that opinion;
- (b) the reasons for that opinion;
- (c) a direction that the cableway installation to which the notice relates—
 - (i) must not be operated, or
 - (ii) that it may only be operated provided certain conditions are met; and
- (d) the date by which the operator must comply with the notice.

(3) Any notice served under paragraph (1) may be withdrawn by the Executive serving written notice of the withdrawal on the operator.

(4) Where a notice has been served on the operator under paragraph (1) the operator must comply with it.

(5) This regulation does not apply to any cableway installation in respect of which the Executive has served an improvement notice or prohibition notice or both under section 21 or 22, as the case may be, of the 1974 Act or the equivalent provisions in the 1978 Order, and that notice remains in force.

Formal non-compliance

25.—(1) Where the Executive has made a finding under paragraph (1) of Article 43 of Regulation 2016/424/EU and has required the relevant economic operator to put an end to the non-compliance concerned but that non-compliance persists, the Executive must serve a notice on the relevant economic operator—

- (a) prohibiting or restricting the subsystem or safety component from being made available on the market; or
- (b) requiring it to withdraw or recall the subsystem or safety component from that market.

(2) A notice served under paragraph (1) must be in writing and must specify the date by which the relevant economic operator must comply with it.

(3) Any notice served under paragraph (1) may be withdrawn by the Executive serving written notice on the relevant economic operator.

(4) Where a notice has been served on a relevant economic operator under paragraph (1), the relevant economic operator must comply with it.

(5) In this regulation, a “relevant economic operator” means any economic operator who has placed or made available, or who is proposing to place or make available on the market, a subsystem or safety component in relation to which there has been a finding of non-compliance as referred to in paragraph (1).

Defence of due diligence

26.—(1) Subject to the following provisions of this regulation, in any proceedings against any person (“P”) for an offence arising under or by virtue of these Regulations it is a defence for P to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against P for such an offence the defence provided in paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

P is not, without the leave of the court, entitled to rely on the defence unless, within a period ending seven clear days before the hearing of the proceedings (or in Scotland, the trial diet), P has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this regulation must give such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of P at the time P serves the notice.

(4) P is not entitled to rely on the defence provided by paragraph (1) by reason of P’s reliance on information supplied by another, unless P shows that it was reasonable in all the circumstances for P to have relied on the information, having regard in particular—

- (a) to the steps which P took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether P had any reason to disbelieve the information.

Liability of persons other than the principal offender

27.—(1) Where the commission by one person (“A”) of an offence arising under or by virtue of these Regulations is due to the act or default of some other person (“B”) in the course of any business of B’s, B is guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against A.

(2) Where a body corporate is guilty of an offence arising under or by virtue of these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or anyone who was purporting to act in any such capacity, any such person, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to the acts and defaults of a member in connection with that member’s functions of management as if the member were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.