

2018 No. 816

TRANSPORT

The Cableway Installations Regulations 2018

<i>Made</i> - - - -	<i>3rd July 2018</i>
<i>Laid before Parliament</i>	<i>9th July 2018</i>
<i>Coming into force</i> - -	<i>30th July 2018</i>

CONTENTS

PART 1

Preliminary

1. Citation and commencement
2. Revocations
3. Interpretation
4. Scope

PART 2

General Requirements

5. Cableway installations: duties of the main contractor
6. Cableway installations: putting into service
7. Cableway installations: operation

PART 3

Authorisation Procedures and Notified Bodies

8. Authorisation by the Secretary of State
9. Notifying authority
- 10.–12. Notification of conformity assessment bodies
13. Application for a stage 1 authorisation
14. Application for a stage 2 authorisation
15. Granting of stage 1 and stage 2 authorisations
16. Secretary of State's refusal to give an authorisation
17. Obligations of manufacturers
18. Obligations of importers
19. Obligations of distributors

PART 4
Market surveillance and enforcement

- 20. Market surveillance authority
- 21. Enforcement in Great Britain
- 22. Enforcement in Northern Ireland
- 23.–24. Subsystems or safety components presenting a risk
- 25. Formal non-compliance
- 26. Defence of due diligence
- 27. Liability of persons other than the principal offender

PART 5
Miscellaneous

- 28. Consequential amendments
- 29. Review

SCHEDULE — Historic, cultural or heritage installations

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State is a Minister designated(b) for the purposes of that section in relation to measures relating to cableway installations designed to carry people and components of such installations.

PART 1
Preliminary

Citation and commencement

1. These Regulations may be cited as the Cableway Installations Regulations 2018 and come into force on 30th July 2018.

Revocations

2. The following instruments are revoked—
- (a) the Cableway Installations Regulations 2004(c); and
 - (b) the Cableway Installations (Amendment) Regulations 2004(d).

(a) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), Schedule, Part 1.
(b) S.I. 2001/2555 to which there are amendments not relevant to these Regulations.
(c) S.I. 2004/129, amended by S.I. 2004/1230, 2006/599, 2008/960, 2011/1043, 2016/1093.
(d) S.I. 2004/1230.

Interpretation

3. In these Regulations—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974(a);

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978(b);

“RAMS” means Regulation (EC) 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/935(c);

“Regulation 2016/424/EU” means Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016 on cableway installations and repealing Directive 2000/9/EC(d);

“authorised cableway installation” means a cableway installation which has been given a stage 1 or stage 2 authorisation or both;

“cableway installation” has the meaning given by Article 3(1) of Regulation 2016/424/EU;

“cableway installation documentation” means the documentation concerning the characteristics of the cableway installation referred to in Article 9(2) of Regulation 2016/424/EU;

“conformity assessment body” has the meaning given by Article 3(23) of Regulation 2016/424/EU;

“distributor” has the meaning given by Article 3(16) of Regulation 2016/424/EU;

“economic operator” has the meaning given by Article 3(17) of Regulation 2016/424/EU;

“entry into service” has the meaning given by Article 3(12) of Regulation 2016/424/EU;

-
- (a) 1974 c. 37; section 20 was amended by the Civil Partnership Act 2004 (c. 33), Schedule 27, paragraph 49 and the Investigatory Powers Act 2016 (c. 25), Schedule 2, paragraph 1; section 22 was amended by the Consumer Protection Act 1987 (c. 43), Schedule 3, paragraph 2; section 23 was amended, in relation to England and Wales, by the Fire and Rescue Services Act 2004 (c. 21) Schedule 1, paragraph 44 and by S.I. 2005/1541 and, in relation to Scotland, by S.S.I. 2005/383, 2006/475 and by the Police and Fire Reform (Scotland) Act 2012 (asp 8), Schedule 7, Part 2, paragraph 49; section 24(2) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2)(a); section 25A was inserted by the Consumer Protection Act 1987 (c. 43), Schedule 3, paragraph 3; section 27 was amended by the Employment Act 1989 (c. 38), Schedule 6, paragraph 10 and Schedule 7, Part 1, by the Energy Act 2013 (c. 32), Schedule 12, Part 1, paragraph 7 and by S.I. 2008/960; section 27A was inserted by the Consumer Protection Act 1987 (c.43), Schedule 3, paragraph 4 and was amended by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraph 18 and by the Energy Act 2013 (c. 32), Schedule 12, Part 1, paragraph 8; section 33 was amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraph 11 and Schedule 18, by the Consumer Protection Act 1987 (c.43) Schedule 3, paragraph 6, by the Forgery and Counterfeiting Act 1981 (c.45) Schedule, Part 1, by the Offshore Safety Act 1992 (c. 15), section 4(2) to (6) and Schedule 2 and by the Health and Safety (Offences) Act 2008 (c. 20) section 1(1); section 34 was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), Schedule 9, paragraph 51, by the Gas Act 1986 (c.44) Schedule 7, paragraph 18, by S.I. 2008/960, by the Coroners and Justice Act 2009 (c. 25), Schedule 21, Part 1, paragraph 25, in relation to Scotland, by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), Schedule 2, paragraph 2; section 38 was amended by the Environment Act 1995 (c. 25) Schedule 22, paragraph 30(7) and by S.I. 2013/755 Schedule 2, Part 1, paragraph 113; section 42 was amended by the Health and Safety (Offences) Act 2008 (c. 20), Schedule 3, paragraph 2(2) and (3); Schedule 3A was inserted by the Health and Safety (Offences) Act 2008 (c. 20), section 1(2) and Schedule 1, and amended by S.I. 2015/664.
- (b) S.I. 1978/1039 (N.I. 9). Relevant amendments are as follows: Article 22 was amended by the Civil Partnership Act 2004 (c. 33) Schedule 29, paragraph 27; article 24 was amended by the Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20)), Schedule 2, paragraph 3; article 25 was amended by the Fire and Rescue Services (Northern Ireland) Order 2006 (S.I. 2006/1254 (N.I. 9)) Schedule 3, paragraph 11; article 26 was amended by the Industrial Training (Northern Ireland) Order 1984 (S.I. 1984/1159 (N.I. 9)), Schedule 4; article 27A was inserted by the Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20)), Schedule 2, paragraph 4; article 29 was amended by the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 (S.I.1998/2795 (N.I. 18)), Schedule 1, paragraph 14; article 29A was inserted by the Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20)), Schedule 2, paragraph 5 and amended by the Commissioner for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraph 19; article 31 was amended by the Criminal Justice (Northern Ireland) Order 1986 (S.I. 1986/1883 (N.I. 15)), article 9 and Schedule 5, the Consumer Protection (Northern Ireland) Order (S.I. 1987/2049 (N.I. 20)) Schedule 2, paragraph 7, and by the Health and Safety (Offences) Act 2008 (c. 20), section 1(3) article 34A was inserted by the Health and Safety at Work (Amendment) (Northern Ireland) Order 1978, (S.I. 1998/2795 (N.I. 18)), Schedule 1, paragraph 16; article 39 was amended by the Health and Safety (Offences) Act 2008 (c. 20), Schedule 3, paragraph 3(2) and (3); Schedule 3A was inserted by the Health and Safety (Offences) Act 2008 (c. 20), Schedule 2.
- (c) O.J. No. L 218, 13.8.2008, p.30.
- (d) O.J. No. L 81, 31.3.2016, p.1.

“essential requirements” means the essential requirements set out in Annex II to Regulation 2016/424/EU and required to be met under Article 6 of that Regulation;

“EU declaration of conformity” means the declaration of conformity referred to in Article 19 of Regulation 2016/424/EU;

“the Executive” means—

- (a) in Great Britain, the Health and Safety Executive^(a); and
- (b) in Northern Ireland, the Health and Safety Executive for Northern Ireland^(b);

“importer” has the meaning given by Article 3(15) of Regulation 2016/424/EU;

“main contractor” means a person who:

- (a) commissions the construction or modification of a cableway installation; or
- (b) constructs or modifies a cableway installation which that person intends to put into service;

“manufacturer” has the meaning given by Article 3(13) of Regulation 2016/424/EU;

“modification” means any work in relation to a cableway installation (including any work in relation to the characteristics, subsystems or safety components of such installation) which could materially affect the capability, capacity or safety of the cableway installation;

“notified body” means a conformity assessment body which has been notified by the Secretary of State to the European Commission and other member States-

- (a) under Article 22 of Regulation 2016/424/EU; or
- (b) under regulation 15(9) of the Cableway Installations Regulations 2004 before the coming into force of these Regulations;

“operator” in relation to a cableway installation means a person who, for the time being has, or is intending to have, management of that installation;

“Regulatory Provisions” means these Regulations, Regulation 2016/424/EU and RAMS;

“safe” in relation to a cableway installation, or a subsystem and safety component incorporated or to be incorporated into a cableway installation, means that it is not liable to endanger the health or safety of persons or property, when properly installed, maintained and operated in accordance with its intended purpose;

“safety analysis” means the safety analysis required to be carried out under Article 8 of Regulation 2016/424/EU;

“safety component” has the meaning given by Article 3(4) of Regulation 2016/424/EU;

“safety report” means the report setting out the results of the safety analysis required under Article 8(5) of Regulation 2016/424/EU;

“stage 1 authorisation” means an authorisation of work for the construction or modification of a cableway installation given by the Secretary of State under regulation 8(1);

“stage 2 authorisation” means an authorisation for the putting into service of a cableway installation given by the Secretary of State under regulation 8(3);

“subsystem” has the meaning given by Article 3(2) of Regulation 2016/424/EU;

“technical file” means a file relating to a cableway installation which contains the safety report, the EU declaration of conformity and other documents relating to the conformity of subsystems and safety components as well as the documentation concerning the characteristics of the cableway installation as referred to in Article 9(2) of Regulation 2016/424/EU;

(a) Established under section 10 of the 1974 Act as substituted by S.I. 2008/960.

(b) Formerly known as the Health and Safety Agency for Northern Ireland which was established under Article 12 of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)). Article 3(1) of the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 (S.I. 1998/2795 (N.I. 18)) changed its name to the Health and Safety Executive for Northern Ireland.

“writing” includes any text transmitted using electronic communications that is received, or accessible by the person to whom it is sent, in legible form.

Scope

4.—(1) The cableway installations listed in the Schedule are categorised as historic, cultural or heritage installations for the purposes of point (b) of Article 2(2) of Regulation 2016/424/EU.

(2) The provisions of Parts 2 to 4 of these Regulations do not apply to the cableway installations referred to in paragraph 1, unless significant changes are made in their design or construction, including subsystems or safety components specifically designed for them.

PART 2

General Requirements

Cableway installations: duties of the main contractor

5.—(1) A person must not carry out or permit to be carried out works for the construction or modification of a cableway installation otherwise than under and in accordance with a stage 1 authorisation.

(2) The main contractor is responsible for carrying out the safety analysis and preparing the safety report required under Article 8 of Regulation 2016/424/EU.

(3) The instruction manual and the corresponding notes relating to the cableway installation must be drawn up in English.

(4) For the purposes of paragraph (1), a stage 1 authorisation includes a stage 1 authorisation given by the Secretary of State under regulation 13(1) of the Cableway Installations Regulations 2004 before the date on which these Regulations come into force.

Cableway installations: putting into service

6.—(1) A person must not put into service a cableway installation otherwise than under and in accordance with a stage 2 authorisation.

(2) For the purposes of this regulation, a cableway installation is put into service on its entry into service and this includes when it first enters service following the completion of works for its modification for which a stage 1 authorisation was required.

(3) For the purposes of paragraph (1), a stage 2 authorisation includes a stage 2 authorisation given by the Secretary of State under regulation 13(3) of the Cableway Installations Regulations 2004 before the date on which these Regulations come into force.

Cableway installations: operation

7. The operator of a cableway installation must at all times whilst the cableway installation remains in service—

- (a) keep a copy of the technical file at the cableway installation; and
- (b) ensure that the cableway installation complies with the conditions set out in the safety report and such conditions (if any) as are imposed in relation to its entry into service by the Secretary of State under regulation 15(3).

PART 3

Authorisation Procedures and Notified Bodies

Authorisation by the Secretary of State

8.—(1) The Secretary of State must authorise (or refuse to authorise) works for the construction or modification of a cableway installation in accordance with this Part.

(2) An authorisation given under paragraph (1) is a stage 1 authorisation.

(3) The Secretary of State must authorise (or refuse to authorise) the entry into service of a cableway installation in accordance with this Part.

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

Notifying authority

9. The Secretary of State is designated as the notifying authority for the United Kingdom for the purposes of Article 23 of Regulation 2016/424/EU.

Notification of conformity assessment bodies

10.—(1) For the purposes of Article 22 of Regulation 2016/424/EU, the Secretary of State must notify to the European Commission and other member States only those conformity assessment bodies that qualify for notification.

(2) A conformity assessment body qualifies for notification if the conditions set out in paragraphs (3) and (4) are met.

(3) The first condition is that the conformity assessment body has submitted an application to the Secretary of State to be notified under Article 22 of Regulation 2016/424/EU, in accordance with Article 29 of Regulation 2016/424/EU.

(4) The second condition is that the Secretary of State is satisfied that the conformity assessment body meets the requirements of Article 26 of Regulation 2016/424/EU.

(5) When deciding whether to notify a conformity assessment body that qualifies for notification to the European Commission and the other member States, the Secretary of State may—

- (a) have regard to any other matter that appears to the Secretary of State to be relevant; and
- (b) set conditions that the conformity assessment body must meet including such conditions that are to apply upon or following the restriction, suspension or withdrawal of its status as a notified body.

(6) Subject to paragraph (7), if at any time it appears to the Secretary of State—

- (a) that a notified body no longer meets the requirements laid down in Article 26 of Regulation 2016/424/EU; or
- (b) that it is failing to meet its obligations,

the Secretary of State may by written notice to that body specify a date on which its status as a notified body will be restricted, suspended or withdrawn, as appropriate depending on the seriousness of the failure to meet those requirements or obligations.

(7) Before the Secretary of State restricts, suspends or withdraws the status of a conformity assessment body as a notified body under paragraph (6) the Secretary of State must—

- (a) give notice in writing to the notified body that the Secretary of State intends to take such action;
- (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 a decision on whether to take such action.

(8) Where the Secretary of State has taken action in respect of a notified body under paragraph (6), or where a notified body has ceased its activity as a conformity assessment body, the body must—

- (a) on the request of the Secretary of State, transfer its files relating to the activities it has undertaken as a notified body to another notified body, to the Secretary of State, or to the Executive;
- (b) in the absence of a request under sub-paragraph (a), ensure that its files relating to the activities it has undertaken as a notified body are kept available for the Secretary of State and the Executive for a period of 10 years beginning on the day on which the relevant document was created.

United Kingdom Accreditation Service

11. The Secretary of State may authorise the United Kingdom Accreditation Service^(a) to carry out the following activities on behalf of the Secretary of State—

- (a) assessing whether a conformity assessment body meets the requirements of Article 26 of Regulation 2016/424/EU; and
- (b) monitoring notified bodies, in accordance with Article 23(1) of Regulation 2016/424/EU.

Fees

12.—(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) must 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 the Secretary of State's functions under this Part as the Secretary of State 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

13.—(1) An application for a stage 1 authorisation must be made by the main contractor.

(2) An application for a stage 1 authorisation must be made in writing to the Secretary of State and accompanied by—

- (a) the relevant fee determined in accordance with regulation 12(3); and
- (b) the cableway installation documentation and the safety report.

(3) Where an application is made for a stage 1 authorisation for the modification of an authorised cableway installation, the content of the cableway installation documentation required

^(a) a company limited by guarantee incorporated in England and Wales under number 3076190 and appointed as the national accreditation body for the purposes of article 4(1) of RAMS under regulation 3 of the Accreditation Regulations 2009 (S.I. 2009/3155).

to be submitted under paragraph (2) may be limited to matters relating to the modification and its repercussions on the cableway installation as a whole.

Application for a stage 2 authorisation

14.—(1) An application for a stage 2 authorisation must be made by the operator.

(2) An application for a stage 2 authorisation must be made in writing to the Secretary of State and accompanied by—

- (a) the relevant fee determined in accordance with regulation 12(3); and
- (b) the technical file.

(3) Where an application is made for a stage 2 authorisation for a cableway installation to enter into service following a modification for which a stage 1 authorisation has been required, the content of the technical file required to be submitted under paragraph (2) may be limited to matters relating to the modification and its repercussions on the cableway installation as a whole.

Granting of stage 1 and stage 2 authorisations

15.—(1) The Secretary of State must grant a stage 1 authorisation if satisfied that—

- (a) the requirements of Regulation 2016/424/EU are likely to be complied with both as regards the construction or modification of the cableway installation itself and as regards the subsystems or safety components incorporated into it; and
- (b) the cableway installation, when constructed or modified, including such subsystems or safety components, is likely to meet the essential requirements applicable to them and be safe.

(2) The Secretary of State must grant a stage 2 authorisation if satisfied that—

- (a) the cableway installation has been designed and constructed in such a way as to comply with the requirements of Regulation 2016/424/EU;
- (b) the cableway installation and the subsystem and safety components incorporated into it are not liable to endanger the health or safety of persons or property when properly maintained and operated in accordance with their intended purpose; and
- (c) the cableway installation has been constructed or modified in accordance with any measures specified in the safety report.

(3) The Secretary of State may grant a stage 1 authorisation or a stage 2 authorisation subject to compliance with such conditions as appear to the Secretary of State to be appropriate for the purposes of ensuring that the cableway installation complies with the essential requirements and is safe.

(4) The conditions referred to in paragraph (3) must include conditions specified in the safety report imposing restrictions on the operation of the cableway installation and conditions with regard to its servicing, supervision, adjustment and maintenance.

(5) The Secretary of State must 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 13, or
 - (ii) a stage 2 authorisation that complies with regulation 14;
- (b) the documents submitted to the Secretary of State are not in English; or
- (c) the applicant has not submitted the fee which the Secretary of State requires to be submitted pursuant to regulation 12(3).

(6) In relation to the modification of a cableway installation, references in this regulation to compliance with Regulation 2016/424/EU or meeting the “essential requirements” are to be construed as applying only in respect of the modification of the cableway installation and its repercussions on the installation as a whole.

Secretary of State’s refusal to give an authorisation

16. Where the Secretary of State is minded to refuse to grant a stage 1 authorisation or a stage 2 authorisation the Secretary of State must—

- (a) give notice in writing to the applicant of the reasons for being so minded; and
- (b) give the applicant the opportunity to make representations within a period of 28 days beginning with the day that notice is given, and consider any such representations made by the applicant within that period before taking a decision on whether to refuse the authorisation.

Obligations of manufacturers

17. A manufacturer must ensure, for the purposes of Article 11(7) of Regulation 2016/424/EU, that any subsystem or safety component which it places on the market is accompanied by copies, in English, of the EU declaration of conformity and instructions and safety information.

Obligations of importers

18. An importer must ensure, for the purposes of Article 13(4) of Regulation 2016/424/EU that any subsystem or safety component which it places on the market is accompanied by instructions and safety information in English.

Obligations of distributors

19. Before making any subsystem or safety component available on the market a distributor must ensure, for the purposes of Article 14(2) of Regulation 2016/424/EU, that the following accompanying documents are in English: the copy of the EU declaration of conformity, the instructions and safety information, and, where appropriate, any other required documents.

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.

PART 5

Miscellaneous

Consequential amendments

28.—(1) In the Provision and Use of Work Equipment Regulations 1998(a), in column (1) of Schedule 1, omit the words "The Cableway Installations Regulations 2004" and in column (2) omit the words "S.I. 2004/129".

(2) In the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999(b), in column (1) of Schedule 2, omit the words "The Cableway Installations Regulations 2004" and in column (2) omit the words "S.I. 2004/129".

Review

29.—(1) The Secretary of State must—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of that review.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Regulation 2016/424/EU is executed and enforced in other member States.

(3) The first report must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(4) Subsequent reports under this regulation are to be published at intervals not exceeding five years.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(c) requires that the reports published under this regulation must, in particular –

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

(a) S.I. 1998/2306.
(b) S.R. 1999/305.
(c) 2015 c. 26.

Signed by authority of the Secretary of State

3rd July 2018

Jesse Norman
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE

Regulation 4(1)

Historic, cultural or heritage installations

The following cableway installations are categorised as historic, cultural or heritage installations, that entered into service before 1st January 1986—

- (1) Cliff Railway, Cliff Railway House, Cliff Terrace, Aberystwyth, Ceredigion SY23 2DN;
- (2) Babbacombe Cliff Railway, Babbacombe Downs Road, Torquay TQ1 3LF.
- (3) Birmingham Airport Railway, Air Rail Maintenance Shop, Concorde Road, Birmingham Airport B26 3QJ;
- (4) East Cliff Railway, East Overcliff Drive / Meyrick Road, Bournemouth BH1 3AA;
- (5) Fisherman's Walk Cliff Railway, Southbourne Overcliff Drive, Bournemouth BH6 3TD;
- (6) West Cliff Railway, St Michael's Road, West Cliff, Bournemouth BH2 5HL;
- (7) Cliff Railway, 6a Castle Terrace, Bridgnorth, Shropshire WV16 4AH;
- (8) Leas Lift, Lower Sandgate Road, Folkestone, Kent CT20 1PR;
- (9) East Hill Cliff Railway, Rock-a-Nore-Road, Hastings TN34 3EG;
- (10) West Hill Cliff Railway, West Street, Hastings TN3 4J;
- (11) Lynton and Lynmouth Cliff Railway, Lee Road, Lynton, North Devon EX35 6HW;
- (12) Great Orme Tramway, Church Walks, Llandudno LL30 2NB;
- (13) Cliff Lift, Lower Promenade, Saltburn TS12 2QX;
- (14) Central Tramway, Marine Parade, Scarborough YO11 2ER;
- (15) South Spa Cliff Lift, Scarborough Spa, South Bay, Scarborough, North Yorkshire YO11 2HD;
- (16) Shipley Glen Cable Tramway, Prod Lane, Baildon, Shipley, W. Yorkshire BD17 5BN; and
- (17) Southend Cliff Railway, Royal Terrace, Southend-on-Sea, Essex SS1 1EA.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the regulation of cableways installations, pursuant to Regulation (EU) 2016/424 of the European Parliament and of the Council of 9th March 2016 on cableway installations (OJ No L 81, 31.3.2016, p.1.) ("Regulation 2016/424/EU") and for related enforcement.

EU Regulation 2016/424 repeals and replaces Council Directive 2000/9/EC of the European Parliament and of the Council of 20th March 2000 relating to cableway installations designed to carry persons (OJ No L 106, 3.5.2000, p.21.); which was implemented in the United Kingdom by the Cableways Installations Regulations 2004 (S.I. 2004/129).

These Regulations revoke the Cableway Installations Regulations 2004 and the Cableway Installations (Amendment) Regulations 2004 (S.I. 2004/1230).

Part 1 contains preliminary provisions. Regulation 4 designates certain cableway installations that entered into service before 1 January 1986 (these are listed in the Schedule) as historic, heritage or cultural installations for the purposes of point (b) of Article 2(2) of Regulation 2016/424/EU (that Regulation does not apply to cableway installations which are so designated) and provides that Parts 2 to 4 of these Regulations do not apply to them.

Part 2 contains the general requirements regarding authorisation of cableway installations being constructed or modified and brought into service. Requirements in relation to conformity assessment of subsystems and safety components of cableway installations are contained in Regulation 2016/424/EU.

Part 3 sets out the authorisation procedures for cableway installations being brought into service. Regulation 9 designates the Secretary of State as the notifying authority for the United Kingdom. Regulation 10 gives the Secretary of State the power to appoint notified bodies for the purposes of Regulation 2016/424/EU, and sets out the process around that appointment. Regulation 11 gives the Secretary of State the power to appoint the United Kingdom Accreditation Authority to assess conformity assessment bodies, and to monitor notified bodies. Regulation 12 sets out the fees that may be charged by a notified body in connection with carrying out its functions. Regulations 13 to 16 set out the process for obtaining stage 1 authorisation (in respect of the construction or modification of a cableway installation) and stage 2 authorisation (in respect of entry into service of a cableway installation). Regulations 17 to 19 place an obligation on manufacturers, importers and distributors to provide the prescribed information in relation to safety components and subsystems in the English language.

The requirements and procedures set out in Parts 2 and 3 (with the exception of those in Regulations 17 to 19) give effect to obligations under Articles 5 – 10, and Chapter IV of Regulation 2016/424/EU for member States of the European Union to put in place such requirements and authorisation procedures. Regulations 17 to 19 give effect to requirements on member States to specify language requirements in Article 11 to 14 of Regulation 2016/424/EU.

Part 4 sets out the market surveillance and enforcement powers and duties of the Health and Safety Executive (“HSE”), in Great Britain, and the Health and Safety Executive for Northern Ireland (“HSE (NI)”), in Northern Ireland. This implements certain requirements of Chapter V of Regulation 2016/424/EU. The principal enforcement powers (Regulations 21 and 22) are derived from the Health and Safety at Work Act 1974 and the Health and Safety at Work (Northern Ireland) Order 1978. Regulation 20 designates HSE in Great Britain, and HSE (NI), in Northern Ireland as the market surveillance authority for the purposes of Regulation 2016/424/EU and Regulation (EC) 765/2008 of the European Parliament and of the Council of 9th July 2008 setting out requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/935 (O.J. No. L 218, 13.8.2998, p.30). Regulations 23 and 24 set out enforcement functions for HSE and HSE (NI) in relation to safety, components, subsystems and cableway installations which present safety risks and Regulation 25 sets out enforcement functions for HSE and HSE (NI) in the event of non-compliance with certain formal aspects of Regulation 2016/424/EU. Regulation 26 provides a defence of due diligence in respect of any proceedings arising under or by virtue of these Regulations. Regulation 27 provides that a person whose act or default results in the commission of an offence under or by virtue of these Regulations by another person, is also guilty of the offence and may be proceeded against.

Part 5 contains consequential amendments to the relevant secondary legislation, and a review clause.

© Crown copyright 2018

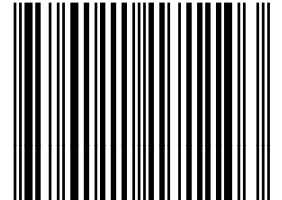
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James,
Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.00

UK201807041015 07/2018 19585

<http://www.legislation.gov.uk/id/uksi/2018/816>

ISBN 978-0-11-117110-3



9 780111 171103