

EXPLANATORY MEMORANDUM TO
THE CABLEWAY INSTALLATIONS (AMENDMENT) (EU EXIT) REGULATIONS
2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument corrects deficiencies in the Cableway Installations Regulations 2018 (S.I. 2018/816) (the “2018 Regulations”) and directly applicable EU Regulation 2016/424 (the “EU Regulation”) which will arise from the UK’s exit from the European Union. It is being made to give clarity and certainty to industry that the 2018 Regulations and the EU Regulation continue to operate efficiently in the event of the UK leaving the European Union without an agreed deal with the EU.

2.2 Cableways regulated by the 2018 Regulations and the EU Regulation are a mixture of funicular railways and aerial transport systems such as ski lifts. The majority are in Scotland for passenger transport in the snow sports sector, but also includes the Emirates line in London. Those that entered into service before 1 January 1986, and are classed as historic cultural or heritage installations (e.g. Great Orme Tramway, Babbacombe Cliff Railway) are excluded from the scope of the 2018 Regulations and the EU Regulation.

2.3 Components for cableway installations undergo conformity assessment processes, to demonstrate that they conform to legislative requirements, including conformity with harmonised EU standards. These are undertaken by conformity assessment bodies in the EU which are notified to the EU Commission by member states (“notified bodies”). The instrument provides a framework for the future introduction by the Secretary of State of a UK regime of “approved bodies” and UK “designated standards”, and for UK marking (once introduced) to be affixed as a conformity assessment marking, equivalent to the current CE marking. Pending the full introduction of such a UK regime, the instrument provides for continuing recognition of EU harmonised standards, conformity assessment bodies and CE marking. This means that cableways components that meet these harmonised standards can continue to be used in installations in the UK after EU exit. This recognition will continue, until such time that the UK regime is established in practice. At present there are no immediate plans to introduce this.

2.4 The instrument amends a number of references and definitions contained within the 2018 Regulations and the EU Regulation so they can continue to function appropriately on EU exit and provide certainty to industry. For example, this includes adaptations to reflect the fact that the UK will no longer be a ‘Member State’.

Explanations

What did any relevant EU law do before exit day?

- 2.5 EU law provides a basis to place products on the market within the EU that will meet the required harmonised technical standards and “essential requirements” for their safe maintainability and operability. Under this regime, economic operators (manufacturers and their authorised representatives, importers and distributors), must take steps to ensure that they do not make products available on the market that do not meet the essential requirements, and act if they consider they may have made such products available.
- 2.6 EU Regulation 2016/424/EU revoked and replaced, with some limited changes, an earlier EU Directive, Council Directive 2000/9/EC on cableway installations designed to carry persons. The EU Regulation, and the Directive which it revoked were adopted as part of the European Union’s programme to eliminate technical barriers to trade; the primary purpose of this approach was to harmonise national laws regarding the design and manufacture of cableways equipment to be used in installations designed to carry passengers. The EU Regulation regulates the introduction and sale on the market of subsystems and safety components; it also requires EU member States to set rules on the design, construction and entry into service of new cableway installations. The 2018 Regulations made provision for these matters and other points of detail, as well as providing for enforcement (by the Health and Safety Executive in Great Britain and the Health and Safety Executive for Northern Ireland in Northern Ireland). The 2018 Regulations also revoked earlier 2004 Regulations which had implemented Directive 2000/9/EC.

Why is it being changed?

- 2.7 The 2018 Regulations and the EU Regulation contain a number of elements which will be inappropriate after the UK leaves the European Union. If left un-amended these would render the 2018 Regulations and the EU Regulation deficient in certain respects post-exit. The majority of the corrections are to amend European Union references and terminology to domestic references, alongside removing requirements to notify matters to the EU Commission.
- 2.8 The most significant change is the new power for the Secretary of State to designate standards after exit day. There are however no immediate plans, or need, to exercise this power. Until it is exercised products that conform to the current EU harmonised standards will continue to be considered compliant with the EU Regulation (as amended by this instrument). Any introduction of national standards would be subject to full consultation with industry and appropriate technical and safety bodies. The other significant change is that the definition of “approved body” replaces the definition of “notified body”; the effect of which is that the Secretary of State can approve bodies to carry out conformity assessment (i.e. the process demonstrating whether the essential requirements of the Regulation relating to a cableway component have been fulfilled) without notifying the EU Commission. There are no such approved bodies in the UK at present so this will have no immediate practical significance to industry and, as with standards, EU notified bodies will continue to be recognised under the EU Regulation and 2018 Regulations (as amended by this instrument) until such time as there are designated standards and therefore a UK body is approved. The other changes are mostly minor and technical in nature; many of them are consequential upon the two changes mentioned above.

What will it now do?

- 2.9 The instrument amends the directly applicable EU Regulation and 2018 Regulations to enable the Secretary of State to designate standards by means of a technical specification for cableways installations, their systems or subsystems, and publish such standards in a manner which is considered appropriate. A designated standard is a technical specification which is adopted by the British Standards Institution (BSI) for repeated or continuous application and then designated for these purposes by the Secretary of State. UK stakeholders from nominating bodies, including the Department for Transport, already participate in BSI's standard setting committee which will continue to meet after exit day. BSI adopts international standards, including EU "harmonised standards". The process for establishing these standards is industry led. EU harmonised standards will however continue to have effect for cableway subsystems and safety components as UK designated standards, until the Secretary of State designates others under the 2018 Regulations.
- 2.10 The European CE marking procedure, which demonstrates compliance of subsystems and components with harmonised standards, is to be replaced by a UK marking procedure. Pending the introduction of designated standards, components that have a CE mark affixed are presumed to comply with the UK mark requirements.
- 2.11 The instrument retains recognition of a national accreditation body, the UK Accreditation Service (UKAS), to carry out the assessment as to whether a conformity assessment body meets the requirements of Article 26 of the EU Regulation (for example organisational independence) relating to conformity assessment bodies, known as "notified bodies", but with the modification that UKAS monitors any "approved bodies" from the time at which the Secretary of State may approve such bodies in the UK. There are, as described above, currently no such bodies operating in the UK.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments and the Sifting Committees

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 Michael Ellis MP, Minister of State at the Department for Transport, has made the following statement regarding Human Rights:
- "In my view the provisions of The Cableway Installations (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights".

6. Legislative Context

- 6.1 The purpose of the legislation is to ensure that cableway subsystems or safety components that are placed on the market remain fit for purpose, safe and compliant. To this end, the legislation places obligations on economic operators throughout the supply chain (manufacturers, importers and distributors). The key obligation is that components meet certain technical and safety requirements and that they are tested to demonstrate compliance with the requirements prior to being placed on the market. Should they be found to be unsafe they ultimately may have to be withdrawn from the market.
- 6.2 The manufacturer is responsible for undertaking an assessment of the subsystem or safety component and making a declaration that it is compliant with the essential requirements. The manufacturer pre-EU exit is required to submit the assessment to a notified body who will undertake a conformity assessment providing the evidence for the manufacturer to provide the EU Declaration of Conformity.
- 6.3 The system of notified bodies is currently based on a system of mutual recognition whereby notifying authorities within Member States (e.g. Member States Governments) ensure that the bodies meet the requirements set at EU level (“notified body requirements”) and then notify the bodies that are assessed as meeting them, to the EU Commission and other Member States, who then have a period in which to object to the notification. This is to ensure consistency of competence of these bodies across the EU. The system of notification provides that where a body has been accredited by a national accreditation body and a certificate has been issued, that certificate can be used by the notifying authority in each member state to verify that the conformity assessment body meets the notified body requirements. In the case of the UK, the national accreditation body is the UK Accreditation Service (UKAS), which is appointed as such by legislation.
- 6.4 Once the relevant conformity assessment procedures have been carried out and the manufacturer is satisfied the product meets the essential requirements, they should make a Declaration of Conformity and the product can be marked with a conformity marking to demonstrate that the manufacturer attests that the product complies with the legal requirements. In the EU this is commonly the CE marking, which is by legal definition the manufacturer’s attestation that the product complies with the EU requirements.
- 6.5 The manufacturer must make a declaration of conformity and must ensure that other technical documentation is drawn up. There are obligations on other operators in the supply chain (such as distributors) to verify that the other economic operators (manufacturers or importers) have complied with the requirements imposed on them by the legislation. There are also requirements on all economic operators in the supply chain to comply with requests for information from enforcing authorities. Under the 2018 Regulations the Executive must make adequate arrangements for enforcement through an “enforcing authority” which in England, Scotland and Wales is the Health and Safety Executive (HSE), and in Northern Ireland, the Health and Safety Executive of Northern Ireland, who have specific duties and powers regarding checking compliance with these requirements to ensure safety. HSE enforce under the 2018 Regulations, Part 4, Market surveillance and enforcement. This enforcement role includes advising industry on their systems and processes to ensure compliance, carrying out market surveillance activities to check and test products, as well as

specialist teams operating at points of entry to intercept unsafe and noncompliant goods as they enter the UK.

- 6.6 The instrument is made in exercise of powers in sections 8 of and paragraph 1 of Schedule 4 to, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (“EU Withdrawal Act”). The EU Withdrawal Act makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of exit, in UK law. It enables the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK’s obligations as a member of the EU. The EU Withdrawal Act also contains temporary power to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that the UK’s legal system continues to function properly outside the EU. The EU Regulation lays down rules for cableway installations that are designed, constructed and operated with a view to transporting persons. The 2018 Regulations make associated provision for the bringing into service of cableway installations and for the enforcement of the regime.

7. Policy background

What is being done and why?

- 7.1 The Government has committed to minimise disruption for business, consumers and citizens to ensure the continued operation of business, infrastructure and public services on EU exit. Whilst the instrument puts in place a legislative framework for a future UK standards and conformity assessment regime (closely paralleling the EU regime), there are no immediate plans to give effect to this in practice, providing continuity to business in the UK; in the meantime the policy objective for the measures this instrument amends is that they should function on and following EU exit largely as they currently do, which includes the continued recognition in the UK on a unilateral basis of EU harmonised standards, EU conformity assessment and the CE marking.
- 7.2 This instrument therefore essentially mirrors the requirements at EU level, creating the legislative framework for a UK regime, whilst providing for continuing unilateral recognition of EU standards on an indefinite basis until the UK decides to give practical effect to that legislative framework; this will occur only when it is decided to designate UK technical standards (designated standards) to replace the EU harmonised standards in the UK. Pending this, products which satisfy the EU requirements post exit, will be deemed to satisfy the UK requirements. This means that products that lawfully bear the CE marking may continue to be used in cableway installations for carrying persons until such time as UK designated standards are introduced.
- 7.3 This instrument is intended to allow the current position to continue regarding the manufacture, import and distribution of subsystems and safety components of cableway installations; and of the design, construction and entry into service of those installations, with the bare minimum of change in the event of a ‘no deal’ EU exit. Without the changes provided for in the instrument, when the UK leaves the EU there could be uncertainty for operators of cableways regarding the conformity of standards for components and the requirements for authorisation of those systems being constructed or modified and brought into service.

- 7.4 The instrument places no new burdens or costs on cableway operators. The British Standards Institution does not charge a fee for participation in the work of its technical committees or to represent BSI in international standardisation activities. This would not change after EU exit.
- 7.5 There is no change to the role of the Health and Safety Executive (HSE) or the Health and Safety Executive for Northern Ireland regarding the safe operation of cableways installations, or fees that the Secretary of State may charge for granting of Stage 1 and Stage 2 authorisation regarding the construction or modification of a cableway installation. For those installations classed as historic, cultural or heritage cableway installations which remain exempt under the 2018 Regulations, the Health and Safety at Work etc. Act 1974 (in Northern Ireland, the Health and Safety at Work (Northern Ireland) Order 1978) will continue to provide the regulatory framework.
- 7.6 In addition to the changes set out above, this instrument will make the following changes, to reflect EU exit and ensure certainty:
- (a) Replace references to language used by Member States with “English”;
 - (b) Remove obligations for Secretary of State to inform the EU Commission and Member States when taking certain actions;
 - (c) Ensure the definitions of the various economic operators reflect the fact that the UK will no longer be in the EU (for example ensuring “importers” are persons who import into the UK, rather than the EU as currently drafted);
 - (d) Existing offences will continue to apply – on economic operators, including importers post exit (who pre-EU exit would have been subject to the less onerous duties of distributors in cases where products were being imported from elsewhere in the EU/EEA as opposed to from third countries).

8. European Union (Withdrawal) Act

- 8.1 This instrument is being made using the power in section 8 of the EU Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 The Department for Transport consulted the Scottish Government, Ski Scotland representing the snow sports industry, and Transport for London. The Department for Transport also wrote to a leading cable manufacturer, Bridon Bekaert, which is established throughout the EU, including the UK. The company gave a brief response and raised no concerns.
- 10.2 The consultation with the Scottish Government and the Scottish Snow Sports Sector raised issues regarding the scope of the 2018 and the EU Regulations; however, this is

not an issue which relates to EU exit and is therefore not dealt with here. No concerns were raised about the approach adopted in this instrument.

- 10.3 The Scottish Snow Sports Sector expressed concern about the fee structure for the inspection of small cableways such as chair lifts. The instrument does not propose any changes to the authorisation process or the fee structure.
- 10.4 Transport for London (TfL) also had concerns about fees, although this related to possible charges for conformity assessment of components by any Secretary of State's "approved body" after exit. The Department for Transport considers that the instrument places no new burdens or costs on cableway operators. In practice there will be no immediate change to the conformity assessment process as the EU based conformity assessment bodies which have been notified to the EU Commission under the EU Regulation will continue to be able to carry out the conformity assessment function, until such time as the Secretary of State designates standards and approves a UK body to carry out that function. The Government will engage with industry (and TfL) before any changes are made.
- 10.5 The Department for Transport consulted the Health and Safety Executive (HSE). HSE responded that as the enforcing authority for cableway installations it was content with the amendments in the instrument. HSE also stated that it was not aware of any new installations that were due to be commissioned in the coming months. The Department for Transport relayed this information to Transport Scotland and TfL. HSE Northern Ireland was not consulted as there are no cableways in Northern Ireland.

11. Guidance

- 11.1 The Department will update its guidance on the regulations of cableways to reflect the amendments provided for in this instrument in due course. The most recent guidance was published in July 2018 following the 2018 Regulations.

12. Impact

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies.
- 12.2 An Impact Assessment has not been prepared for this instrument because, following the light touch consultation, the Department for Transport is satisfied that the overall costs or benefits to business will be below £5 million net per year.
- 12.3 There are around 100 cableway installations in operation in the UK, with the majority in Scotland in the ski industry for leisure and tourism. The instrument will not impose any further burdens or costs on industry, many of which are small and medium sized enterprises or administrations. The instrument does not change the fees that the Secretary of State may charge for granting of Stage 1 and Stage 2 authorisation for a cableway installation.
- 12.4 There is no, or no significant, impact on the public sector.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. The Government considers that the instrument is not expected to impose a disproportionate cost to small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring this instrument is for it to be monitored during the course of normal departmental business. As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Paul O'Hara at the Department for Transport, telephone: 020 7944 2291 or email: Paul.O'Hara@dft.gov.uk, or Steve Berry at the Department for Transport, telephone: 07771 345161 or email: Steve.Berry@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Dan Moore, Director, Rail EU Exit at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Michael Ellis MP, Minister of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

- 1.1 Michael Ellis MP, Minister of State at the Department for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Cableway Installations (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 The instrument makes the minimum adjustments required to correct deficiencies in EU legislation in order to maintain the status quo in respect of the operation of cableway installations in the UK after exit day.

2. Good reasons

- 2.1 Michael Ellis MP, Minister of State at the Department for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are to ensure that the legislative framework for cableway operators in the UK continues with certainty and a minimum of disruption in the event of the UK leaving the European Union without an agreed deal. This is important to particular local economies, such as the ski industry in Scotland, which rely on cableways for access to their leisure and tourist facilities.

3. Equalities

- 3.1 Michael Ellis MP, Minister of State at the Department for Transport, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 3.2 Michael Ellis MP, Minister of State at the Department for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Michael Ellis, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern Ireland and as the instrument extends to Northern Ireland I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland”.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Criminal offences

- 5.1 Michael Ellis MP, Minister of State at the Department for Transport, has made the following statement(s) regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the creation of a criminal offence and the penalty in respect of it in the Cableway Installations (Amendment) (EU Exit) Regulations 2019.”

These are:

- The instrument makes minimal technical amendments to correct inoperabilities in the Cableway Installations Regulations 2018 and EU Regulation 2016/424/EU and as a consequence of exiting the EU.
- The correction of inoperabilities to reflect the UK’s exit from the EU have the effect that when a UK regime is introduced, manufacturers, distributors and importers will no longer be able to rely on EU declarations of conformity and CE markings to comply with their legal obligations but will need to get UK declarations of conformity and UK markings instead of or as well as EU declarations and markings to avoid committing criminal offences.
- Those importing safety components and subsystems for cableway installations into the UK from EU and EEA countries will, from exit day, have to comply with obligations which previously only applied to importers from outside the EU/EEA, where before they would have only had to comply with distributor requirements. These importer obligations are more onerous and the changes made have the effect, on exit, of extending the class of persons liable for offences of non-compliance with those obligations.