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STATUTORY INSTRUMENTS

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**2004 No. 129**

**The Cableway Installations Regulations 2004**

**PART I**

*Preliminary*

**Citation and commencement**

1. These Regulations may be cited as the Cableway Installations Regulations 2004 and shall come into force on 3rd May 2004.

**Interpretation etc.**

2.—(1) In these Regulations the “Cableway Installations Directive” means Directive [2000/9/EC](#)(1) of the European Parliament and Council relating to cableway installations designed to carry persons and any reference in the Schedules to “the Directive” and “this Directive” shall be construed accordingly.

(2) Except for the references to the European Communities in the definition of “the Commission” and in relation to the Official Journal, a reference to the Community includes a reference to the EEA, and a reference to a Member State includes a reference to an EEA State.

(3) For the purposes of paragraph (2)—

- (a) the “EEA” means the European Economic Area;
- (b) an “EEA State” means a State which is a Contracting Party to the EEA Agreement; and
- (c) the “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(2).

(4) In these Regulations—

- (a) Annexes I to IX of the Cableway Installations Directive are respectively set out in Schedules 1 to 9 hereto;
- (b) a reference to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations;
- (c) a reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation in which that reference occurs; and
- (d) a reference to an Article is a reference to the Article so numbered in the Cableway Installations Directive and a reference to a paragraph of an Article shall be construed accordingly.

(5) In these Regulations [unless the context otherwise requires]—

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(1) O.J. L 106, 3.5.2000, p. 21.

(2) Cmnd. 2972 and 2183. The application of the Cableways Directive was extended to the EEA from 29th September 2001 by virtue of Decision No. 115/2001 of the EEA Joint Committee (O.J. No. L 322, 6.12.2001, p. 27) which inserted a reference to the Cableways Directive after point 1a in Chapter XXIV of Annex II to the EEA Agreement.

“the 1974 Act” means the Health and Safety at Work etc Act 1974<sup>(3)</sup>;

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978<sup>(4)</sup>;

“authorised cableway installation” means a cableway installation which has been given a stage 2 authorisation by the Secretary of State under regulation 13(3);

“cableway installation” means an installation made up of several components that—

- (a) is used or intended to be used for the purpose of providing an operational system for carrying persons in vehicles, on chairs or by towing devices;
- (b) uses cables positioned along the line of travel to provide suspension or traction or both; and
- (c) is one of the following—
  - (i) cable car (including a gondola and chair lift) where the cabins or chairs are lifted or displaced by one or more carrier cables;
  - (ii) drag lift, where users with appropriate equipment are dragged by means of a cable; or
  - (iii) funicular railway or other installation with vehicles mounted on wheels or on other suspension devices where traction is provided by one or more cables;

“CE conformity marking” means a marking consisting of the initials “CE” in the form shown in Schedule 9 and reference in the Schedules to “CE marking” should be construed to a reference to “CE conformity marking”;

“the Commission” means the Commission of the European Communities;

“conformity assessment procedure” means a process for assessing the conformity of safety components and subsystems with the provisions of these Regulations, undertaken—

- (a) in relation to a safety component, in accordance with regulation 9(1), and
- (b) in relation to a subsystem, in accordance with regulation 9(2);

“declaration of conformity” means—

- (a) in relation to a safety component, a declaration which contains the information set out in Schedule 4; and
- (b) in relation to a subsystem, a declaration which contains the information set out in Schedule 6,

and reference in Schedule 5 to a “certificate of conformity” should be construed as a reference to a “declaration of conformity”;

“EC examination certificate” means a certificate drawn up in accordance with Schedule 7 in relation to a subsystem, and reference in Schedule 7 to “the examination certificate” and reference in Schedule 6 to the “EC conformity certificate” should be construed as a reference to an “EC examination certificate”;

“EC type-examination certificate” means a certificate drawn up in accordance with Module B in Schedule 5 in relation to a safety component, and references in Schedules 4 and 5 to “EC type certificate” and “EC examination certificate” should be construed as references to an “EC type-examination certificate”;

“essential requirements” means such of the essential requirements set out in Schedule 2 as are relevant to a cableway installation, safety component or subsystem, (as the case may be);

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(3) 1974 c. 37.

(4) S.I. 1978/1039 (N.I. 9).

“European specifications referred to in Article 2(2) of this Directive” means a common technical specification, a European technical approval or a national standard transposing a harmonised European standard;

“the Executive” means—

(a) in Great Britain, the Health and Safety Executive<sup>(5)</sup>; and

(b) in Northern Ireland, the Health and Safety Executive for Northern Ireland<sup>(6)</sup>;

“harmonised European standard” means a technical specification (a European standard or harmonisation document), adopted on a mandate from the European Commission, by the European Committee for Electrotechnical Standardisation, or European Committee for Standardisation or by both of those bodies, in accordance with Directive 98/34/EC of 22nd June 1998 of the European Parliament and of the Council<sup>(7)</sup> laying down a procedure for the provision of information in the field of technical standards and regulations, and of which the reference number is published in the Official Journal of the European Communities;

“identification number” in relation to a notified body means the reference number allocated by the Commission for that notified body, and references in Schedule 5 to “identification symbol” should be construed as a reference to the identification number;

“infrastructure” means layout, system data, station structures and structures along the line needed for the construction and operation of the installation (including the foundations) that are designed specially for each installation and constructed on site;

“innovative approach” means an approach to the design or construction of a subsystem or safety component which does not involve the use of a standard or a specification that has been approved by a recognised standardising body;

“installation” means the whole on-site system consisting of infrastructure and subsystems;

“log book” means a book containing the documentation and information required by regulation 6(1);

“main contractor” means the person who:

(a) commissions the construction or modification of a cableway installation; or

(b) constructs or modifies a cableway installation for putting into service by him;

“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, and cognate expressions shall be construed accordingly;

“notified body” shall have the meaning set out in regulation 14;

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

“Official Journal” means the Official Journal of the European Communities;

“placing on the market” in relation to a safety component or subsystem shall occur when a person first makes that safety component or subsystem available on the community market with a view to its distribution or use in the Community; and cognate expressions shall be construed accordingly; and references in the Schedules to “put on the market” or cognate expressions, shall be construed as references to placing on the market;

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(5) Established under section 10 of the 1974 Act.

(6) 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.

(7) O.J. L 204, 21.7.1998, p. 37 as amended by Directive 98/48/EC (O.J. L 217, 5.8.1998, p. 18).

“putting into service” means in respect of a cableway installation that has been constructed or modified under these Regulations, first use of that installation for the carriage of passengers and cognate expressions shall be construed accordingly;

“recognised standardising body” means a body listed in Annex I and Annex II of Directive [98/34/EC](#)(8);

“responsible person” in relation to a subsystem or safety component means the manufacturer of the subsystem or safety component or his authorised representative established in the Community;

“safe” in relation to a cableway installation, subsystem and safety component means that the cableway installation, or in the case of a safety component or subsystem, the cableway installation into which it is to be installed, when properly installed and maintained and used for its intended purpose is not liable to endanger the health or safety of persons or, where appropriate, the safety of property, and cognate expressions shall be construed accordingly;

“safety analysis” means an analysis of factors relating to the safety of a cableway installation, which—

- (a) complies with the requirements set out in Schedule 3; and
- (b) covers all safety aspects of that installation and its surroundings taking into account the design, construction or modification and putting into service, and identifying risks to safety that could occur during operation of that installation;

“safety component” means any component, set of components, sub-assembly or complete assembly of equipment and any device incorporated in a cableway installation—

- (a) for the purpose of ensuring a safety function; and
- (b) which has been identified as a safety component in the safety analysis,

the failure of which would endanger the health or safety of any person;

“safety report” means a report summarising the safety analysis and setting out the measures to be taken to deal with any risks to safety associated with the design, construction, modification, putting into service and operation of the cableway installation, and a list of the safety components and subsystems which are comprised in that installation;

“special conditions” means conditions imposed by the Executive pursuant to regulations 17(8) or 18(8);

“stage 1 authorisation” means the authorisation of work for the construction or modification of a cableway installation by the Secretary of State pursuant to regulation 13(1);

“stage 2 authorisation” means the authorisation of putting into service of a cableway installation by the Secretary of State pursuant to regulation 13(3);

“standard” means a technical specification approved by a recognised standardising body for repeated or continuous application, with which compliance is not compulsory;

“subsystem” means the subsystems of a cableway installation set out in Schedule 1;

“technical documentation” in relation to the EC type-examination of a safety component means the documentation described in paragraph 3 of Schedule 5;

“technical documentation” in relation to the EC examination of a subsystem means the documentation described in paragraph 3 of Schedule 7;

“technical file” means a file relating to a cableway installation which contains the matters required by regulation 4(3)(c);

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(8) O.J. No. L204, 21.07.1998, p. 37.

“transposed European standard” means a national standard of a Member State which transposes a harmonised European standard; and

“writing” apart from its usual meaning includes any text transmitted using electronic communications that is received, or accessible by the person to whom it is sent.

(6) For the purposes of satisfying the essential requirements, where a national standard transposing a harmonised European standard covers one or more of the relevant essential requirements, any cableway installation, its infrastructure, the subsystems and the safety components of any cableway installations; constructed or operated in accordance with that transposed European standard shall be presumed to comply with that or, as the case may be, those essential requirements.

### **Application of the Regulations**

3.—(1) Subject to paragraphs (2) and (3) these Regulations apply in relation to—

(a) any cableway installation—

(i) put into service, or

(ii) modified,

after the date of the coming into force of these Regulations; and

(b) any subsystem or safety component placed on the market after the date of the coming into force of these Regulations.

(2) These Regulations do not apply to—

(a) lifts, within the meaning of the Lifts Regulations 1997<sup>(9)</sup>;

(b) cableway installations used wholly or mainly for agricultural purposes;

(c) cableway installations (on-site or mobile) in fairgrounds or amusement parks which are designed for leisure purposes and not as a means for transporting persons;

(d) mining installations or on-site cableway installations used wholly or mainly for industrial purposes;

(e) cable operated ferries;

(f) rack railways;

(g) cableway installations that are chain driven;

(h) cable-operated tramways of a traditional construction;

(i) subsystems and safety components for the installations referred to in sub-paragraphs (a) to (h) above.

(3) Subject to paragraph (4), these Regulations do not apply to a cableway installation constructed or put into service, or both, or a safety component or subsystem placed on the market in the United Kingdom before 3rd May 2004 which complies with all the provisions by or under any enactment with which it was required to comply on 3rd May 2000 before it could be put into service, or placed on the market.

(4) The exclusion provided for in paragraph (3) does not apply in the case of a cableway installation or safety component which—

(a) unless required to bear the CE conformity marking pursuant to any other Community obligation, bears the CE conformity marking or an inscription liable to be confused with the CE conformity marking; or

(b) bears or is accompanied by any other indication, howsoever expressed, that it complies with the Cableways Directive.

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(9) S.I. 1997/831.

## PART II

### *General Requirements*

#### **Cableway installations—duties on the main contractor**

4.—(1) The main contractor shall not carry out or permit to be carried out works for the construction or modification of a cableway installation unless he has obtained a stage 1 authorisation under regulation 13(1) in respect of that cableway installation.

(2) Before making an application for a stage 1 authorisation in relation to the construction or modification of a cableway installation the main contractor shall ensure that:—

- (a) a safety analysis is undertaken; and
- (b) a safety report is prepared.

(3) The main contractor shall ensure, in relation to the construction or modification of a cableway installation that—

- (a) that installation complies with—
  - (i) any relevant measures specified in the safety report,
  - (ii) special conditions (if any) imposed by the Executive under regulation 17(8), and
  - (iii) conditions imposed (if any) by the Secretary of State under regulation 19(3) with the stage 1 authorisation;
- (b) that installation complies with such of the essential requirements as relate to that type of installation;
- (c) a technical file has been compiled which contains—
  - (i) the safety analysis;
  - (ii) the safety report; and
  - (iii) the declarations of conformity and the accompanying technical documentation relating to any safety component or subsystem which forms a part of the cableway installation.

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

#### **Cableway installations—putting into service**

5.—(1) No person shall put into service a cableway installation unless a stage 2 authorisation has been obtained in respect of that installation.

#### **Cableway installations—operation**

6.—(1) The operator of any authorised cableway installation that is in service shall compile a log book in relation to that installation containing documents or information which—

- (a) sets out any—
  - (i) special conditions imposed under regulation 18(8) with the stage 2 authorisation,
  - (ii) measures specified in the safety report, and
  - (iii) conditions imposed by the Secretary of State under regulation 19(3) with the stage 2 authorisation,

- in respect of its putting into service or operation; and
  - (b) records evidence of its servicing, supervision, adjustment and maintenance.
- (2) The operator of any authorised cableway installation that is in service shall ensure that while that installation remains in service—
- (a) it complies with any measures specified in relation to its operation by the safety report;
  - (b) it complies with such conditions (if any) as are imposed in relation to its putting into service by the Secretary of State under regulation 19(3);
  - (c) the technical file is retained at the site of that installation; and
  - (d) the log book is retained and updated.

### **Safety components—placing on the market**

7.—(1) Subject to regulation 11, no person who is a responsible person shall place on the market any safety component unless—

- (a) the requirements of paragraph (2) have been complied with in relation to it; or
  - (b) the safety component that he places on the market is identical to a safety component that he has already placed on the market and in relation to which the provisions of paragraph (2) have been met.
- (2) The requirements in respect of any safety component are that—
- (a) it satisfies such of the essential requirements as relate to that component;
  - (b) it permits the construction or modification of a cableway installation which will satisfy the essential requirements;
  - (c) the appropriate conformity assessment procedure specified in regulation 9(1) has been carried out in respect of it by a notified body;
  - (d) the CE conformity marking has been properly affixed to it, or on a label inseparably attached to it; and
  - (e) it is accompanied by a declaration of conformity drawn up in respect of it.
- (3) For the purposes of paragraph (2)(d) the CE conformity marking shall not be regarded as properly affixed to the safety component unless the person who has affixed the CE conformity marking—
- (a) affixes the said marking in a distinct, visible, and legible manner; and
  - (b) in the case of safety components which are the subject of Community Directives other than the Cableways Directive which also provide for the affixing of the CE conformity marking, has complied with the requirements of those other Directives in respect to that safety component.
- (4) No markings which—
- (a) are likely to deceive any person as regards the meaning and form of the CE conformity marking; or
  - (b) reduce the visibility and legibility of the CE conformity marking, shall be affixed to the safety component.
- (5) Any documentation or other information in relation to a safety component required to be retained under the conformity assessment procedure under paragraph (2)(c) shall be retained by the responsible person for any period specified in that procedure.

**Subsystems—placing on the market**

**8.**—(1) Subject to regulation 11, no person who is a responsible person shall place on the market any subsystem unless the requirements of paragraph (2) have been complied with in relation to it.

- (2) The requirements in respect of any subsystem are that—
- (a) it satisfies such of the essential requirements as relate to that subsystem;
  - (b) it permits the construction or modification of a cableway installation which will satisfy the essential requirements;
  - (c) a notified body has—
    - (i) carried out the conformity assessment procedure specified in regulation 9(2); and
    - (ii) drawn up the EC examination certificate and the technical documentation, and
  - (d) it is accompanied by—
    - (i) a declaration of conformity drawn up by the responsible person in respect of it, and
    - (ii) the technical documentation.

(3) Any documentation or other information in relation to a subsystem required to be retained under the conformity assessment procedure under paragraph (2)(c) shall be retained by the responsible person for any period specified in that procedure.

**Subsystems and safety components—conformity assessment procedures**

**9.**—(1) For the purposes of regulation 7(2)(c), the appropriate conformity assessment procedure shall be the procedure set out in Schedule 5.

(2) For the purposes of regulation 8(2)(c)(i), the appropriate conformity assessment procedure shall be the procedure set out in Schedule 7.

**Subsystems and safety components—duties on persons other than the responsible person**

**10.** Where in the case of a subsystem or safety component, any of the requirements of regulations 7 or 8 have not been met by the responsible person, such requirements shall be met by any person who—

- (a) places that subsystem or safety component on the market; or
- (b) manufactures that safety component for use in any cableway installation that he is constructing or modifying.

**Subsystems and safety components—exceptions to placing on the market**

**11.** For the purposes of regulations 7 or 8, a safety component or a subsystem shall not be regarded as being placed on the market where that safety component or subsystem—

- (a) will be put into service in a country outside the Community; or
- (b) is imported into the Community for re-export to a country outside the Community,

but this paragraph shall not apply in relation to a safety component if the CE conformity marking, or any inscription liable to be confused therewith, is affixed to the component or its label.



### **Conformity of cableway installations, subsystems and safety components with the provisions of these Regulations**

12.—(1) Subject to paragraph (2) an authorised cableway installation shall be taken to conform with the requirements of regulation 4 unless there are reasonable grounds for suspecting that it does not so conform.

(2) Paragraph (1) does not apply where a person fails or refuses to make available to the Executive the log book and technical file which he is required to retain pursuant to regulation 6.

(3) Subject to paragraph (5), a safety component—

- (a) which bears a CE conformity marking, or to which a label bearing the CE conformity marking has been inseparably attached; and
- (b) which is accompanied by a declaration of conformity, in accordance with regulation 7;

shall be taken to conform with all of the provisions of these Regulations which apply to it unless there are reasonable grounds for suspecting that it does not so conform.

(4) Subject to paragraph (5), a subsystem which is accompanied by—

- (a) a declaration of conformity; and
- (b) the technical documentation required by the EC examination of that subsystem,

in accordance with regulation 8, shall be taken to conform with such of the essential requirements as relate to that subsystem unless there are reasonable grounds for suspecting that it does not so conform.

(5) Paragraphs (3) and (4) do not apply where a person fails or refuses to make available to the Executive the documentation which he is required to retain by any of the conformity assessment procedures which apply to the safety component or subsystem in question or a copy of that documentation.

## **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.

## PART IV

### *Enforcement*

**Enforcement in Great Britain**

**23.—**(1) It shall be the duty of the Executive to make adequate arrangements for the enforcement of these Regulations in Great Britain and accordingly a reference to an “enforcing authority” in the provisions applied for the purposes of such enforcement by paragraph (3) shall be construed as a reference to the Executive.

(2) Subject to paragraph (4), the provisions of the 1974 Act specified in paragraph (3) shall apply for the purposes of the enforcement in Great Britain of these Regulations as if they were health and safety regulations for the purposes of that Act, and any function of the Health and Safety Commission under any other provisions of the 1974 Act which is exercisable in relation to any function of the Executive under or in respect of health and safety regulations (including their enforcement) shall be exercisable as if these Regulations were health and safety regulations for the purposes of that Act.

(3) The provisions of the 1974 Act are—

- (a) sections 19 to 22 (enforcement);
- (b) sections 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) sections 33 to 42 (provisions as to offences); and
- (f) Section 48(1) to (3) (application to the Crown).

(4) A failure to discharge a duty placed on the Executive by these Regulations shall not be an offence, and section 33(1)(c) of the 1974 Act shall have effect accordingly.

### **Enforcement in Northern Ireland**

**24.**—(1) It shall be the duty of the Executive to make adequate arrangements for the enforcement of these Regulations in Northern Ireland and accordingly a reference to an “enforcing authority” in the provisions applied for the purposes of such enforcement by paragraph (3) shall be construed as a reference to the Executive.

(2) Subject to paragraph (4), the provisions of the 1978 Order specified in paragraph (3) shall apply for the purposes of the enforcement in Northern Ireland of these Regulations as if they were health and safety regulations for the purposes of that Order, and any function of the Health and Safety Executive for Northern Ireland under any other provisions of that Order which is exercisable in relation to any function of the Executive under or in respect of health and safety regulations (including their enforcement) shall be exercisable as if these Regulations 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 (enforcement);
- (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) articles 31 to 39 (provisions as to offences); and
- (g) article 44(1) to (3) (application to Crown).

(4) A failure to discharge a duty placed on the Executive by these Regulations shall not be an offence under article 31(1)(c) of the 1978 Order.

### **Notices in relation to a safety component or subsystem that is not safe**

**25.**—(1) If the Executive is of the opinion that a—

- (a) safety component bearing a CE conformity marking; or
- (b) subsystem with a declaration of conformity, that has been placed on the market and 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 restrict the conditions of use of that safety component or subsystem.

(2) A notice served under paragraph (1) shall 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 safety component or subsystem to which the notice relates shall not be used, or that its conditions of use shall be restricted; and

(d) the date by which the operator shall 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 shall comply with it.

(5) This regulation shall not apply to any safety component or subsystem 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 the 1978 Order, and that notice remains in force.

### **Notices in relation to a safety component or subsystem that is not safe—notification to the Commission**

**26.** Where it appears to the Executive that a—

(a) safety component bearing a CE conformity marking; or

(b) subsystem accompanied by a declaration of conformity,

that has been placed on the market and put into service in accordance with its intended purpose, is not safe, the Executive shall notify in writing the Commission, and where appropriate other Member States, of that fact forthwith.

### **Notices in relation to a cableway installation that is not safe**

**27.—**(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) shall 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) shall not be operated, or

(ii) that it may only be operated provided certain conditions are met; and

(d) the date by which the operator shall 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 shall 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.

### **Safety components—Notice of improper fixation of the CE conformity marking**

**28.—**(1) Where the Executive has reasonable grounds for considering that the CE conformity marking has not been properly affixed to a safety component, or to a label inseparably attached to



a safety component, by the responsible person in accordance with regulation 7, it may give notice in writing to that person.

(2) A notice which is given under paragraph (1) shall—

- (a) state that the Executive considers that the CE conformity marking has not been properly affixed to the relevant safety component or label, as the case may be, in accordance with regulation 7;
- (b) specify the respect in which it is so considered and give particulars thereof;
- (c) require the responsible person—
  - (i) to secure that any safety component to which the notice relates conforms as regards the provisions concerning the proper affixation of the CE conformity marking within such period as may be specified in the notice, or
  - (ii) to provide evidence within that period, to the satisfaction of the Executive that the CE conformity marking has been properly affixed; and
- (d) inform the responsible person that if the non-conformity continues (or if satisfactory evidence has not been provided) within the period specified in the notice, further action may be taken under the Regulations.

(3) Where a notice has been served on the person responsible in accordance with this regulation, the responsible person shall comply with that notice.

### **Defence of Due Diligence**

**29.**—(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person 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,

that person shall not, without the leave of the court, be 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), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall 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 the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

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

### **Liability of persons other than the principal offender**

**30.**—(1) Where the commission by any person of an offence under these Regulations is due to the act or default of some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under 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 any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he 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 V

### *Supplementary provisions*

#### **Amendment of the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994**

**31.**—(1) In regulation 4 of the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994<sup>(10)</sup>—

(a) after paragraph (2A) there shall be inserted the following paragraph—

“(2B) Approval shall not be required in relation to any safety component, subsystem or cableway installation to the extent that the safety component, subsystem or cableway installation, as the case may be, is subject to the requirements of regulations 4 to 12 of the Cableway Installations Regulations 2004.”;

(b) In paragraph (5) substitute “In paragraph 2A” for “In this regulation”;

(c) After paragraph (5) there shall be added the following paragraph—

“(6) In paragraph (2B), “safety component”, “subsystem” and “cableway installation” shall have the same meanings as they have in the Cableway Installations Regulations 2004.”.

#### **Consequential amendments**

**32.**—(1) In the Provision and Use of Work Equipment Regulations 1998<sup>(11)</sup>, at the end of column (1) of Schedule 1, there shall be added the words “The Cableway Installations Regulations 2004” at the end of column (2) the words “S.I.2004/129”.

(2) In the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999<sup>(12)</sup>, at the end of column (1) of Schedule 2, there shall be added the words “The Cableway Installations Regulations 2004” at the end of column (2) the words “S.I. 2004/129”.

<sup>(10)</sup> S.I. 1994/157.

<sup>(11)</sup> S.I. 1998/2306.

<sup>(12)</sup> S.R. 1999/305.

Signed by authority of the Secretary of State for Transport

28th January 2004

*David Jamieson*  
Parliamentary Under Secretary  
Department for Transport