

The Cableway Installations Regulations 2018

The secretary

Guidance

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The Cableway Installations Regulations 2018: Guidance

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1. Introduction

- On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The government respected the result and triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.
- The Cableway Installations Regulations 2018 (S.I. 2018 No. 816) (“2018 UK Regulations”) come into force on 30 July 2018.
- The 2018 UK Regulations implement provisions of a new EU Regulation, EU Regulation 2016/424/EU of 9 March 2016¹ on the harmonisation of the laws of Member States relating to Cableways and safety components (the “2016 EU Regulation”) and also supplement it with enforcement provisions (see section 4 below).
- The 2018 UK Regulations and the 2016 EU Regulation together set out rules and procedures to be followed:
 - for the placing on the market (whether by manufactures, or their authorised representatives, or by importers or distributors) of safety components and subsystems for cableways – the detailed legal provisions relating to this are dealt with in the 2016 EU Regulation (see section 6 of the European Commission Guidance on this);
 - in relation to obtaining authorisation for the construction or modification of cableway installations and their entry into service – the detailed legal provisions for this are set out in the 2018 UK Regulations (see section 3 below on this);
 - for conformity assessment bodies who wish to become EU notified bodies for the purpose of carrying out conformity assessment tasks in relation to safety components and subsystems intended to be placed on the market – provisions in

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0424>; O.J. No. L 81, 31.3.2016, p.1.

relation to this are set out in the UK Regulations but cross referring to the requirements which Notified Bodies have to meet which are set out in detail in the 2016 EU Regulation (see section 5 below on this).

- The 2016 EU Regulation and the 2018 UK Regulations together replace the old law, which was found in the Cableway Installations Regulations 2004 (the “2004 UK Regulations”). The 2004 UK Regulations implemented an earlier EU Directive (Council Directive 2000/9/EC relating to cableway installations designed to carry persons)² (the “2000 Directive”). The 2016 EU Regulation has revoked the 2000 Directive and the 2018 UK Regulations revoke the 2004 UK Regulations.
- Installers of cableways and manufacturers of safety components and subsystems³ for cableways now therefore need to comply with the requirements of the 2016 EU Regulation and the new 2018 UK Regulations.
- An authorisation granted under the 2004 UK Regulations for a cableway to be constructed or modified or to be brought into service will continue to be valid. Any requirements or conditions to which that authorisation was subject must continue to be complied with. Safety components and subsystems which have been certified as in conformity with the requirements of the 2000 Directive will also continue to be valid.
- The main changes that the 2016 EU Regulation introduces relate to the alignment of the New Legislative Framework (NLF) principles. The NLF is a set of legislative acts (including the Regulation (EC) No 765/2008 and the Decision No 768/2008/EC) which create a more coherent and consistent legal framework for the marketing of products in the European Union across all sectors. The main changes relate to definitions and obligations of economic operators (which are installers, manufacturers, authorised representatives, importers and distributors); definitions of “placing on the market” and “making available on the market”; and market surveillance procedures including the EU safeguard procedures.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0009&from=en>; O.J. No. L 106, 3.5.2000, p.22.

³ “Subsystems” are defined in article 3 of the 2016 EU Regulation and listed in Annex 1 of that Regulation. “Safety components” are defined in article 3 of the 2016 EU Regulation as “any component of equipment or any device intended to be incorporated into a subsystem or cableway installation for the purpose of ensuring a safety function, the failure of which endangers the safety or health of passengers, operating personnel or third parties”.

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2. Scope

The 2018 UK Regulations apply throughout the United Kingdom in relation to the construction of new cableway installations designed to transport persons, to modifications of cableway installations significant enough to require a new authorisation (see below) and in relation to the entry into service of cableway installations. The EU 2016 Regulation deals with the procedures for the placing on the market of subsystems and safety components for cableway installations. The 2018 UK Regulations set out enforcement provisions in relation to both those Regulations and the requirements which apply directly under the EU 2016 Regulations which apply directly.

Exclusions

The EU 2016 Regulation and the 2018 UK Regulations do not apply to the following:

- (a) lifts covered by Directive 2014/33/EU⁴/the Lifts Regulations 2016 (S.I. 2016/1093);
- (b) installations intended for agricultural or forestry purposes;
- (c) cableway installations for the service of mountain shelters and huts intended only for the transport of goods and specifically designated persons;
- (d) on-site or mobile equipment exclusively designed for leisure and amusement purposes and not as a means for transporting persons;
- (e) mining installations or other industrial on-site installations used for industrial activities;
- (f) installations in which the users or their carriers are waterborne.

The EU 2016 Regulation and the 2018 UK Regulations also do not apply to the historic cableway installations listed in the Schedule to the 2018 UK Regulations. These listed installations have been categorised by the DfT as historic, cultural and heritage installations (as permitted under the EU 2016 Regulation). This exemption also applies in relation to subsystems and safety components specifically designed for them. This exemption however remains subject to no significant changes being made to the design or installation of these cableways including any subsystems or safety components specifically designed for them. On the types of change that might be significant enough to trigger the loss of exemption see further below in section 3 under “modifications that may require authorisation”.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0033&from=EN>

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3. Statutory requirement for authorisation

Under the 2018 UK Regulations, all new cableway installations must be authorised. Modifications of existing systems which materially affect the capability, capacity or safety of the cableway also require authorisation. For both, authorisation applies at two separate stages, and the authorisation is given by the Secretary of State.

The DfT will determine each case individually with support from HSE as and where necessary. We will advise the operator/promoter on whether we consider a proposed change is significant enough to require a new authorisation. This approach is similar to the HSE practice for lifts, whose systems and sub-systems can, like cableways, be varied.

Prior to seeking Stage 1 or 2 authorisation, operators or planners of cableway installations are advised to contact DFT/HSE. Contact details are available at the end of this guidance note.

Modifications that may require authorisation

Seeking to prescribe in detail all the types of changes to existing cableway systems which could require a Stage 1 or Stage 2 authorisation is not possible as cableway installations have been installed since Victorian times, use quite different systems and sub-systems, and in many aspects, can be unique. However, for ease and to help operators and installers, the following is intended to give some illustrative examples only of cases where we would normally expect a change to require a Stage 1 and Stage 2 authorisation. The list is by no means exhaustive, nor intended to be; it is intended to illustrate the scale of change that might normally be expected to require authorisation:

- Taking a system (pre1986 or not) from one location and reinstalling it at another;
- Replacement of the entire drive and control system;
- A significant increase in length of the installation; and
- A significant increase in passengers by increasing the number of conveyances.

Modifications that do not require authorisation

We would not expect every change or diligent maintenance to a cableway installation to require a new authorisation. The following illustrative examples, again not exhaustive nor intended to be, would be categorised as being of a scale which would normally be unlikely to materially affect the capability, capacity or safety of a cableways installation, and as such would not require a Stage 1/Stage 2 authorisation:

- Replacement of electrical components for ones with a higher rating or greater safety integrity, for example contactors and relays;
- Replacement of mechanical components for ones with a higher rating or greater safety integrity, for example replacing a wrought iron spoked, cast rimmed suspension pulley for a fabricated one;
- Additional safety systems or components.

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Stage 1 and Stage 2 Authorisation

Under regulation 8 of the 2018 UK Regulations, the Secretary of State for Transport is responsible for authorising (or refusing to authorise) works for the construction or modification of cableway installations. This is the stage 1 authorisation.

Similarly, the Secretary of State is responsible for authorising (or refusing to authorise) the putting into service of cableway installations - this is the stage 2 authorisation.

Stage 1 authorisations will only be given if the Secretary of State is satisfied that the requirements of the EU 2016 Regulation are likely to be complied with both as regards the construction or modification of the cableway installation itself and as regards subsystems and safety components incorporated into it and that the installation, when constructed or modified, is likely to be safe and meet the essential requirements set out in the EU 2016 Regulation (see regulation 15(1) of the UK 2018 Regulations and see below as to “essential requirements”).

Stage 2 authorisations will only be given if the Secretary of State is satisfied that the cableway installation:

- (a) has been designed and constructed in such a way as to comply with the requirements of the EU 2016 Regulation;
- (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 conditions specified in the safety report.

Both Stage 1 and Stage 2 authorisations may be given subject to such conditions as are considered necessary to ensure the cableway is safe and complies with the essential requirements, both about its construction/modification and its subsequent operation. These would include any conditions specified in the safety report imposing restrictions on the operation of the cableway installation or relating to the servicing, supervision, adjustment and maintenance of the cableway installation.

The essential requirements which need to be met for the above purposes are the essential requirements set out in Annex II of the EU 2016 Regulation about maintainability and operability and applicable to the design, construction and entry into service of cableway installations and to the subsystems and safety components used in them.

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Prior to submission of formal application

Informal contact with the Department for Transport

Operators who are intending to construct new cableway installations or to modify existing ones (including relocating them to other sites) are encouraged to contact the Department for Transport (DfT) or the Health and Safety Executive (HSE) as early as possible. Contact details can be found at the end of this Guidance.

Officials will be happy to discuss proposals and to provide advice on the authorisation process. It will be helpful to have as much background information on the proposed new or modified installation as possible, and on the following aspects:

- the nature and scale of the proposed installation,
- details of the location,
- indication of estimated overall costs,
- timing - is the work urgent/ by what date does it have to be completed?

Fees

Regulation 12 of the 2018 UK Regulations empowers the Secretary of State for Transport to charge 'such reasonable fees relating to, or incidental to' carrying out its authorisation functions, as the Secretary of State may determine. This may also include a fee, or a reasonable estimate to be paid in advance of any work being carried out.

In compliance with the Secretary of State's powers under the 2018 UK Regulations, DfT will calculate a reasonable fee for processing each stage of the authorisation. This fee will reflect the costs to DfT of procuring expert advice to undertake assessment of the planned proposals and the necessary analyses to determine the Stage 1 and Stage 2 authorisation. If sufficient information is provided ahead of a formal application, DfT will use that information to calculate a fee, if not, it will calculate the fee on receipt of a complete application.

The 2018 UK Regulations are clear that the fees will be reasonable and be based on the costs that are incurred. The Department for Transport is not seeking to profit from the authorisation process, will seek to keep fees proportionate to the size of the system, and does not want to deter promoters from proceeding with improvements to Cableways.

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Application for Stage 1 authorisation

Regulation 13 of the UK 2018 Regulations provides that applications can be made by the owners/operators of the proposed installation or by an organisation commissioned by them to undertake the actual work of construction or modification.

In either case, the applicant is referred to in the Regulations as 'the main contractor' and must submit a written application to the Secretary of State. The application must be accompanied by a technical file which must include:

- Plans/description of the intended works required; and
- A full technical file which includes a safety report and safety analysis.

The formal letter of application should confirm and, if appropriate expand upon the details of the installation that were provided at the informal discussion stage.

Applicants will also be required to submit a fee in respect of the stage 1 authorisation, in accordance with the principles outlined above.

If HSE require further information at this stage in order for them to decide whether to impose special conditions, they will notify the applicants in writing.

Copies of documents

Applicants are asked to submit copies of everything either in hard copy or electronically - the formal application itself, a full technical report which includes a safety analysis and safety report to the Department for Transport and to the Health and Safety Executive.

Safety Analysis/Report

The safety report required to be submitted with the Stage 1 authorisation application must set out the results of a full safety analysis. The matters required to be dealt with by the safety analysis and safety report are set out at Article 8 of the EU 2016 Regulation.

The safety analysis is required to

- (a) consider all modes of operation envisaged;
- (b) follow a recognised or established method;
- (c) consider the current state of the art and the complexity of the cableway installation in question;

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(d) ensure that the design and configuration of the cableway installation takes account of the local surroundings and the most adverse situations to ensure satisfactory safety conditions;

(e) cover all safety aspects of the cableway installation and its external factors in the context of the design, construction and entry into service;

(f) make it possible to identify from past experience risks liable to occur during the operation of the cableway installation.

The safety analysis must also cover the safety devices and their effects on the cableway installation and related subsystems that they bring into action so that the safety devices:

(a) can react to an initial breakdown or failure detected so as to remain either in a state that guarantees safety, in a lower operating mode or in a fail-safe state;

(b) are redundant and are monitored; or

(c) are such that the probability of their failure can be evaluated and their effects are of a standard equivalent to that achieved by safety devices that meet the criteria set out in points (a) and (b).

The safety analysis is also to be used to draw up the inventory of risks and dangerous situations, to recommend the measures envisaged to deal with such risks and to determine the list of subsystems and safety components to be incorporated into the cableway installation.

The safety report should also ensure that everyone involved in the construction of the installation recognises and accepts the measures proposed for dealing with potential operating risks.

Processing of Stage 1 Application

Once the complete application has been received, Department for Transport officials will liaise with expert advisors for them to commence their evaluation. If the advisors believe it is necessary to undertake a site visit as part of their evaluation at this stage, they will contact the applicants directly to make the necessary arrangements.

The authorisation

Once the advisors have reported on their evaluation of the application, the Secretary of State will reach a view on whether to give an authorisation for the applicants to proceed with work of constructing or modifying the installation, taking account of the advice, the Secretary of State has received and any other relevant considerations.

The applicants will then be informed in writing of whether an authorisation has been given or whether the Secretary is minded to refuse an authorisation.

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Refusal to give an authorisation

If the Secretary of State is minded to refuse to give an authorisation, the applicants will be given a written explanation of the reasons for being so minded. In such a case under the 2018 UK Regulations applicants will be given the opportunity to make representations to the Secretary of State for Transport within a period of 28 days of the refusal letter.

The Secretary of State will then make a final decision on whether or not to give an authorisation in the light of any representations made.

Application for Stage 2 Authorisation

Once the applicants and/or their contractors have completed the work to construct or modify the installation, they must obtain a Stage 2 authorisation from the Secretary of State before any installation can be put into operation. The operator of the installation (defined in the regulations as 'the person who, for the time being has, or is intending to have the management of that installation') is asked to submit this application electronically to the Secretary of State at the email address at the end of this guidance note.

The application must be accompanied by the technical file, containing the safety report and the safety analysis, as well as the declarations of conformity and accompanying technical documentation relating to the installation's safety components and subsystems.

EU Declarations of Conformity & technical documentation for safety components

This should include details of the manufacturer, descriptions of the safety components, details of the conformity declaration procedure used, and of any notified body involved in the conformity procedure and, where appropriate, the references for the applicable harmonised standards. Full details of matters to be included in the EU Declaration of Conformity are at Annex IX of the 2016 EU Regulation

The technical documentation must enable the conformity of the component to be assessed and must cover the design, manufacture and operation of the component.

Declarations of Conformity & technical documentation for subsystems

This should also include details of the EU examination (the person who ordered it, the notified body which carried it out and the outcome) a description of the subsystem, and all relevant provisions with which it must comply, including any operating restrictions and conditions. This includes all construction plans and calculations, diagrams, descriptions of computer and automatic systems and any operating and servicing instructions, as well as a list of the safety components used in the subsystem.

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The operator should also submit the fee in respect of the stage 2 authorisation, along with the formal application. The amount will have been notified in the letter confirming the stage 1 authorisation.

If HSE require further information at this stage for them to decide whether to impose special conditions, they will notify the applicants in writing.

Copies of documents

Applicants are asked to submit complete copies of the full Stage 2 application either in hard format or electronically - the formal application itself, the safety analysis and the safety report to the Department for Transport and to Health and Safety Executive. DfT officials will, as before, provide the documentation to expert advisors and to HSE.

Processing of stage 2 application

As with the stage 1 application, DfT officials will ensure that copies of all the documents are sent to the expert advisors for them to commence their evaluation. If the advisors believe it is necessary to undertake a site visit as part of their evaluation at this stage, they will contact the applicants directly to make the necessary arrangements. This may be additional to, or in place of the visit undertaken as part of the stage 1 evaluation.

The authorisation

Once the advisors have reported on their evaluation of the application, the Secretary of State will reach a view on whether to give an authorisation for the applicants to proceed with bringing the installation into service operation, taking account of the advice, the Secretary of State has received and any other relevant considerations.

The applicants will then be informed in writing whether an authorisation has been given or whether the Secretary of State is minded to refuse an authorisation.

Refusal to give an authorisation

If the Secretary of State is minded to refuse an authorisation, the applicants will be given a written explanation of the Secretary of State's reasons for being so minded. Where this happens, the Regulations require that applicants are given the opportunity to make representations to the Secretary of State within a period of 28 days of receipt of refusal.

The Secretary of State will then take the final decision on whether or not to give an authorisation in the light of any representations made.

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4. Enforcement and Penalties

In Great Britain (England, Wales and Scotland), the Health and Safety Executive is responsible for enforcing the 2018 UK Regulations and the 2016 EU Regulation in respect of Cableway installations and their subsystems and safety components.

In Northern Ireland the HSE/NI is responsible for ensuring the Regulations are enforced (see) <https://www.hseni.gov.uk/>

The 2018 UK Regulations also provide powers to HSE and HSE NI to enforce the Regulations and the RAMS the Regulation on Accreditation and Market Surveillance Regulation (EC 765/2008) which sets out requirements for the market surveillance of products).

The 2018 UK Regulations provide the power to market surveillance authorities to act against economic operators for products that are not in conformity with the Regulations. There are requirements on economic operators to co-operate with the enforcement authority as appropriate on request.

A person committing an offence under the Regulations will be liable to a penalty. Penalties can include a fine or a prison sentence of up to two years for the most serious offences.

While it is matter for the enforcement authority to decide whether prosecution is appropriate in each case, should a prosecution take place, it is at discretion of the court to decide the penalties imposed on the offender

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5. Notified Bodies

Notified Bodies carry out duties and functions to support manufacturers in meeting the conformity assessment procedures.

A list of Notified Bodies, including UK Notified Bodies, may be found on the NANDO website.

<http://ec.europa.eu/growth/tools-databases/nando/index.cfm>

Economic operators are free to select any suitable Notified Body from any Member State.

Prospective notified bodies should apply to UKAS (United Kingdom Accreditation Service) and arrange for an assessment to be made as to their suitability for appointment as a notified body. Please see the website for details <http://www.ukas.com/>

UKAS will send an assessment report to the notifying authority DfT, who will assess the application and where the Secretary of State is satisfied as to the suitability of the applicant draw up a letter of appointment containing terms and conditions of appointment and enter the detail of the appointment on the NANDO database.

Further information on notified body appointments can be found at:

Guidelines on the appointment of UK Notified Bodies

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/546456/beis-16-20-notified-bodies-guidance.pdf

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6. European Commission Guidance

The European Commission has a dedicated page on its website that provides guidance and information on the Cableways sector:

https://ec.europa.eu/growth/sectors/mechanical-engineering/cableways_en

The European Commission has produced guidance called the Blue Guide intended to contribute to a better understanding of EU product safety rules and to a more uniform and coherent application across different sectors and throughout the single market. This provides detailed guidance on the conformity assessment processes for subsystems and safety components. A copy can be found at this link:

Blue Guide <http://ec.europa.eu/DocsRoom/documents/18027/>

The Blue Guide was published in the Official Journal of the European Union (O.J. 2016/C 272, page 01 (26 July 2016)). (ISSN 1 977 - 091X (electronic edition) ISSN 1 725 – 2423 (paper edition).

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7. Safeguard procedure

Where a subsystem or safety component complies with the requirements of the EU 2016 Regulation but nevertheless is found to represent a risk to the health or safety of persons or property the HSE and HSENI have powers under article 42 of the EU 2016 Regulation to require the relevant economic operator⁵ to take appropriate measures to ensure the subsystem or component no longer presents those risks or to withdraw it within a reasonable period. The economic operator is required to take such action throughout the EU (see article 42(2)). Under the safeguard procedure, the UK must inform the European Commission and other EU Member States immediately of any enforcement action taken indicating the reasons justifying the action. This will enable other Member States to take action against similar products placed on the market on their territories.

Similarly, if another Member State initiates the procedure with respect to action taken on their territories, certain actions are likely to be required of UK market surveillance authorities and the Secretary of State. The regulations allow the Secretary of State to raise an objection against the measures taken under the safeguard procedure initiated by another Member State. The European Commission will determine whether the action taken is justified; if so the UK enforcement authority is likely to be required to take necessary measures to ensure the product is withdrawn from the market. Where the European Commission find the action taken by the Member State initiating the safeguard procedure is not justified that Member State must withdraw the measure.

8. Regulators' Code

Market Surveillance Authorities must have regard to the Regulators' Code when developing the policies and operational procedures that guide their regulatory activities in this area. They should carry out their activities in a way that supports those they regulate to comply and grow, including choosing proportionate approaches that reflect risk.

In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Unless immediate action is needed to prevent a serious breach, regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent. The Secretary of State takes account of the provisions of both the Regulators' Code and the Growth Duty in exercising the Secretary of State's regulatory functions.

⁵ i.e. the manufacturer or its authorised representative or the importer or distributor of a subsystem or safety component

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A link to the Regulators' Code can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

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9. Contact Details

Department for Transport

Department for Transport

33 Horseferry Road

LONDON

SW1P 4DR

Email: highwaysmaintenance@dft.gov.uk

Health and Safety Executive

Safety Unit

Redgrave Court,

Merton Road,

Bootle, Merseyside,

L20 7HS

Email: safety.unit@hse.gov.uk