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STATUTORY INSTRUMENTS

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**2004 No. 129**

**The Cableway Installations Regulations 2004**

**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.