



STATUTORY INSTRUMENTS.

S.I. No. 543 of 2020



EUROPEAN UNION (CABLEWAY INSTALLATIONS) REGULATIONS
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I, EAMON RYAN, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving full effect to Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Cableway Installations) Regulations 2020.

Interpretation

2. (1) In these Regulations—

“Act of 2005” means Railway Safety Act 2005 (No. 31 of 2005);

“Article” means, unless otherwise indicated, an Article of the EU Regulation;

“CRR” means Commission for Railway Regulation;

“EU Regulation” means Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016¹;

“inspector” means a person appointed or deemed appointed under Regulation 17 as an inspector;

“person responsible for a cableway installation” means, in relation to the installation—

- (a) a person who has obtained planning permission for the development of the land upon which the cableway installation is to be constructed or is in operation under section 33 of the Planning and Development Act 2000 (No. 30 of 2000), or
- (b) another person referred to in Regulation 5(4);

¹ OJ No. L81, 31.3.2016, p.1

“record” means any memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and any thing that is a part or a copy, in any form, of any of the foregoing or is a combination of two or more of any of the foregoing.

(2) A word or expression which is used in these Regulations and is also used in the EU Regulation has, unless it appears to the contrary, the same meaning in these Regulations as it has in the EU Regulation.

(3) For the purposes of the EU Regulation a reference to a language which can easily be understood by users in Articles 11, 13, and 14 is a reference to the English language or the Irish and English languages.

(4) For the purpose of compliance with Article 19(2) an EU declaration of conformity shall be translated into the English language or the Irish and English languages.

Dursey Island Cableway – non-application

3. The cableway installation situated at Dursey Island in the county of Cork is categorised as a historic installation for the purposes of Article 2(2)(b).

Authorisation of cableway installations

4. A person shall not construct or enter into service a cableway installation unless that installation has been authorised in accordance with Regulation 5 for the purposes of Article 9 and the construction or entry into service is in compliance with Article 9 and any term or condition of the authorisation.

5. (1) The CRR is responsible in the State for authorising the construction and entry into service of cableway installations or their modification. It shall lay down procedures for such authorisation in accordance with Articles 5 and 9. The procedures shall provide for matters relating to the granting of authorisations (including applications and refusals).

(2) The CRR shall charge the fee set out in column (3) of the Schedule in respect of assessing applications for authorisations at reference number 1.

(3) An application for authorisation for the purposes of Article 9 shall be made to the CRR by or on behalf of the person responsible for a cableway installation and the authorisation shall be in the name of that person.

(4) Where another person takes responsibility for a cableway installation subsequent to its authorisation an application shall be made to the CRR by or on behalf of the other person to amend the authorisation, accompanied by the fee set out in column (3) of the Schedule at reference number 2. The CRR may accordingly alter the authorisation with or without terms or conditions.

Appeals

6. (1) Where the CRR decides to—
- (a) refuse to grant an authorisation for the construction, modification or entry into service of an installation under Regulation 5, or
 - (b) direct the person responsible for a cableway installation to cease or restrict operations under Regulation 8,

it shall by notice inform the person responsible for the cableway installation concerned of its decision.

(2) A decision takes effect upon its making, notwithstanding any representations or appeals made under this Regulation.

(3) Where the CRR makes a decision referred to in paragraph (1), the person responsible for the cableway installation concerned may, within 14 days of service of the notice, make representations to the CRR. The CRR shall consider any such representations, if made, and confirm, adjust or withdraw the decision.

(4) Where the CRR under paragraph (3) confirms a decision, the person responsible for the cableway installation concerned may, not later than 14 days from the date of the notice or the confirmation of the decision, appeal the decision to an appeal panel established by the CRR for the purpose of hearing the appeal and stating the grounds on which the appeal is made.

- (5) An appeal made under paragraph (4) shall—
- (a) be made in writing to the CRR,
 - (b) state the name and address of the person making the appeal, and
 - (c) be accompanied by the fee set out in column (3) of the Schedule at reference number 3.

(6) An appeal panel shall consist of at least 2 but not more than 3 independent and suitably qualified persons appointed by the CRR, one of whom shall be designated by the CRR to be chairperson of the appeal panel.

(7) An appeal panel shall determine its own procedure.

(8) Where an appeal is made under paragraph (4) the decision relating to it stands, unless upon application to it the appeal panel decides otherwise, pending the outcome or withdrawal of the appeal.

(9) An appeal under this Regulation shall be heard in a fair and transparent manner.

(10) On hearing the appeal, the appeal panel may confirm the decision, vary it or allow the appeal and shall notify the appellant of its decision.

(11) An appeal panel shall notify the person making the appeal and the CRR of its decision. The CRR shall publish notice of the decision of the appeal panel.

(12) The decision of an appeal panel is final other than on a point of law on which an appeal lies to the High Court.

(13) In this Regulation—

“appeal panel” means an appeal panel established under this Regulation;

“decision” means a decision referred to in subparagraph (a) or (b) of paragraph (1).

Offences – persons responsible for cableway installations

7. The person responsible for a cableway installation who fails to comply with Article 8 or Article 9(2) or fails to comply with a term or condition of an authorisation under Regulation 5 commits an offence.

8. The CRR may by notice prohibit, restrict or impose conditions upon the operation of a cableway installation which it finds has failed to comply with Article 10. The person responsible for a cableway installation who fails to comply with the notice commits an offence.

Offences – economic operators

9. (1) An economic operator who fails to comply with Chapter II of the EU Regulation commits an offence.

(2) A manufacturer who fails to comply with Article 18 or 19 commits an offence and is liable on summary conviction to a class A fine.

(3) An economic operator who fails to comply with Article 21 commits an offence and is liable on summary conviction to a class A fine.

Notifying authority

10. The Minister for Transport is designated as the notifying authority in the State for the purposes of Article 23.

11. The Irish National Accreditation Board shall carry out the assessment and monitoring referred to in Article 23(1).

12. (1) Where the notifying authority considers making a decision under Article 32(1) it shall by notice inform the person concerned of it and give reasons for it. It shall allow representations to be made, within 14 days of service of the notice, and consider any such representations if made before making the decision.

(2) A person aggrieved by a decision made under Article 32(1) may, within 21 days from the date of the decision, appeal the decision to an appeal panel established by the notifying authority.

(3) An appeal shall be in writing and state the grounds on which it is made and the name of the appellant.

(4) An appeal panel shall consist of at least 2 but not more than 3 independent and suitably qualified persons appointed by the notifying authority, one of whom shall be designated by the notifying authority to be chairperson of the appeal panel.

(5) An appeal panel shall determine its own procedure.

(6) An appeal under this Regulation shall be heard in a fair and transparent manner.

(7) The appeal panel may affirm, set aside or modify the decision of the notifying authority.

(8) An appeal panel shall notify the person making the appeal and the notifying authority of its decision. The notifying authority shall publish notice of the decision of the appeal panel.

(9) The decision of the appeal panel is final other than on a point of law on which an appeal lies to the High Court.

(10) Subject to the determination of any appeal under this Regulation, a notified body which—

- (a) has its notification restricted, suspended or withdrawn under Article 32(1) and continues activities as a notified body, or
- (b) fails to take the appropriate steps decided by notice given to it by the notifying authority under Article 32(2) in relation to its files,

commits an offence.

(11) In this Regulation “appeal panel” means an appeal panel established under this Regulation.

Other functions of Commission for Railway Regulation

13. The market surveillance authority in the State is the CRR.

14. The CRR is the competent authority in the State who may make a reasoned request under the EU Regulation.

15. The power of the CRR to make regulations under section 26 of the Act of 2005 to impose levy to be paid each year by a specified class of railway organisation shall be included as a power to impose levy on an authorised cableway installation for the purposes of these Regulations and, accordingly, reference in that section to classes of railway organisations shall be read as including reference to authorised cableway installations.

Directions

16. (1) Where the CRR considers a person to not be complying with the EU Regulation it may by notice direct the person to comply with the EU Regulation in accordance with the terms of the notice.

(2) A direction under paragraph (1) takes effect—

- (a) immediately upon its service, where the CRR considers it necessary to prevent a serious risk to the health or safety of persons or property, or
- (b) in any other case of non-compliance, upon the expiration of the period allowed for representations to be made under paragraph (3).

(3) The person receiving a direction under paragraph (1) may, within 14 days of service of the notice, make representations in respect of it. The CRR shall consider any representations and affirm (with or without modification) or withdraw the direction.

(4) Where a direction is affirmed under paragraph (3) the person concerned may, within 14 days of service of the notice of affirmation, appeal against the direction to the High Court. On hearing the appeal the court may either confirm or vary the direction or allow the appeal. The decision of the court is final, save that, by leave of the court, on a specified question of law, the decision may be appealed to the Court of Appeal.

(5) The person receiving a direction under paragraph (1) may apply to the High Court to have the operation of the direction suspended until the outcome of any consideration under paragraph (3) or any appeal under paragraph (4). The judge, if he or she is satisfied that there are reasonable grounds for so doing in the interests of justice and having regard to the objectives of the EU Regulation, may direct that the operation of the direction is so suspended.

(6) A person who fails to comply with a direction under this Regulation commits an offence.

Inspectors

17. (1) The CRR may appoint such and so many persons as it considers necessary to be inspectors for ensuring compliance with the EU Regulation.

(2) An inspector shall be furnished with a warrant of his or her appointment and when exercising a power conferred on him or her under this Regulation shall, if requested by any person thereby affected, produce it to him or her for inspection.

(3) An authorised officer appointed under the Regulations revoked by Regulation 23 who holds his or her warrant of appointment immediately before the making of these Regulations is deemed to be appointed as an inspector under this Regulation.

(4) A person appointed as an inspector under section 73 of the Act of 2005 is deemed to be appointed as an inspector under this Regulation.

18. (1) An inspector may for the purpose of ensuring compliance with the EU Regulation—

- (a) at all reasonable times, enter a cableway installation which is under construction or in operation or where a subsystem or safety component is manufactured or kept and carry out an inspection,
- (b) require the person responsible or the person in charge, at the material time, of the installation or subsystem to produce to him or her any books, documents, records or safety reports (and in the case of information in non-legible form to produce it in legible form) and to give the inspector such information as he or she may reasonably require in relation to the installation, subsystem or component,
- (c) inspect or take copies or extracts from any such books, documents, records or reports (including information in non-legible form a copy of such extract from such information in permanent legible form),
- (d) remove and retain such records for such period as may be reasonable for further examination,
- (e) carry out such examinations, inspections or tests of the installation, subsystem or safety component as the inspector considers appropriate, and, if the inspector thinks fit, remove or have removed any part of the installation, subsystem or component and retain it for a reasonable period to facilitate such an examination, testing or inspection,
- (f) examine any procedure connected with installing the installation, subsystem or safety component or its manufacture,
- (g) secure or direct to have secured the installation or the place where the subsystem or safety component is located for future examination,
- (h) where appropriate, install, use and maintain at such installation or place monitoring instruments or systems or take measurements or photographs to assist his or her inspection,
- (i) travel on any cableway installation,
- (j) direct that any cableway installation or part of it and anything on it shall be left undisturbed for so long as it is reasonably necessary for the purpose of the EU Regulation,
- (k) require any person to afford him or her such facilities and assistance within his or her control or responsibilities as are reasonably necessary to enable him or her to exercise any of the powers conferred on him or her under this Regulation,
- (l) require the person responsible or the person in charge, at the material time, of the installation or subsystem to give information to the inspector for the purposes of the EU

Regulation and to sign a declaration of the truth, if required, of the information given, and

- (m) cause any part of the cableway installation which appears to him or her to be reasonably necessary for the purpose of the EU Regulation to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purposes of the process or test) and where an inspector proposes to exercise the power conferred by this paragraph in the case of the part found, he or she shall, if so requested by a person who at the time is present and who may have responsibilities in respect of the part, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(2) A person who—

- (a) obstructs or interferes with an inspector in exercise of his or her powers under this Regulation, or
- (b) without reasonable excuse, fails to comply with a requirement of an inspector under this Regulation, or in purported compliance with such a requirement gives the inspector information which is false or misleading,

commits an offence and is liable on summary conviction to a class A fine.

(3) A statement or declaration made by a person under a requirement for information under paragraph (1)(l) is not admissible as evidence in proceedings against the person for an offence under Regulation 7 or 8.

(4) The CRR shall consult with persons responsible for cableway installations in relation to procedural arrangements for entry by inspectors upon cableway installations.

(5) An inspector shall not, except under a warrant under paragraph (7) or with the consent of the occupier, enter a domestic dwelling for the purposes of this section.

(6) Where an inspector in the exercise of his or her powers under this section is prevented from entering any premises, place or vehicle, an application may be made under paragraph (7) authorising such entry.

(7) If a judge of the District Court is satisfied on the sworn information of an inspector that there are reasonable grounds for suspecting that information required by an inspector for the purpose of compliance with the EU Regulation is held at any premises, place or vehicle, the judge may issue a warrant authorising the inspector, accompanied if the inspector considers it necessary by other inspectors or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so required, to enter, if need be by reasonable force, the premises, place or vehicle and exercise all or any of the powers conferred on an inspector under this Regulation.

Penalties and proceedings

19. A person who commits an offence under these Regulations (other than Regulation (9)(2) or (3) or 18(2)) is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €300,000.

20. (1) Proceedings for an offence under these Regulations (other than Regulation 12(10)) may be brought and prosecuted summarily by the CRR.

(2) Proceedings for an offence under Regulation 12(10) may be brought and prosecuted summarily by the notifying authority.

(3) Where a person is convicted of an offence under Regulation 7 or 8, the court may, if it thinks it appropriate, order that person to pay to the CRR the costs and expenses, measured by the court, incurred by the CRR in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees or persons engaged by the CRR.

Offence – body corporate

21. (1) Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any wilful neglect on the part of, any person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she committed the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of a body corporate.

Service of notices, etc.

22 (1) A notice, direction or other document that is required to be given to a person under these Regulations shall be in writing and addressed to the person concerned and given to the person in any of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person carries on business or ordinarily resides or, in case an address for service has been given, at that address;
- (c) by sending it by pre-paid registered post to the address at which the person carries on business or ordinarily resides or, in case an address for service has been given, to that address;

- (d) where there is a facility for receiving the notice, direction or other document by electronic means at the address at which the person carries on business or ordinarily resides or, in case an address for service has been given, at that address; by transmitting it by such means to that address, provided the notice, direction or other document is also delivered in any of the other ways referred to in this paragraph.

(2) For the purposes of paragraph (1), a company formed and registered under the Companies Act 2014 (No. 38 of 2014) or an existing company within the meaning of that Act is deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

Revocation

23. The following are revoked:

- (a) the European Communities (Cableway Installations Designed to Carry Persons) Regulations 2003 (S.I. No. 470 of 2003);
- (b) the European Communities (Cableway Installations Designed to Carry Persons) (Amendment) Regulations 2007 (S.I. No. 766 of 2007).

SCHEDULE

Fees

| Reference Number (1) | Item (2) | Fee (3) |
|-------------------------|---|----------------|
| 1 | Assessment of applications for authorisations under Regulation 5 for each day of assessment provided the total fee does not exceed €50,000. | €1,250 per day |
| 2 | Change in person responsible for a cableway installation under Regulation 5. | €100 |
| 3 | Appeal against decisions under Regulation 6. | €5,000 |



GIVEN under my Official Seal,
25 November, 2020.

EAMON RYAN,
Minister for Transport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

The purpose of these Regulations is to give full effect to Regulation (EU) 2016/424. The aim of Regulation (EU) 2016/424 is to lay down rules for cableway installations that are designed, constructed, and operated with a view to transporting persons. It also ensures a single European market for subsystems and safety components for cableway installations.

These Regulations require the construction, entry into service, and modification of cableways to be authorised by the Commission for Railway Regulation. They establish the Commission for Railway Regulation as the State's market surveillance authority for subsystems and safety components. These Regulations also provide for the appointment of inspectors by the Commission for Railway Regulation to enforce Regulation (EU) 2016/424.

These Regulations provide for penalties for economic operators and persons responsible for cableway installations who contravene Regulation (EU) 2016/424.

Regulation (EU) 2016/424 does not apply to the cableway at Dursey Island, County Cork, which entered service before 1 January 1986 and which is categorised as a historic cableway installation for the purposes of Regulation (EU) 2016/424.

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