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Derogation from the requirement to provide a permanent "refuge" space when installing lifts

Guidance on application and on applying to Department of Enterprise, Tourism and Employment (DETE) for derogation under Annex I, Essential Health and Safety Requirements Point 2.2, Directive 2014/33/EU on the harmonisation of the laws of the Member States relating to Lifts and Safety Components for Lifts

Department of Enterprise, Tourism and Employment

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1. Introduction

The European Union (Lifts and Safety Components for Lifts) Regulations 2017 (S.I. No. 232 of 2017) the “Lifts Regulations”, as amended by the European Union (Lifts and Safety Components for Lifts) (Amendment) Regulations 2022 (S.I. No. 323 of 2022), transposes the EU Lifts Directive 2014/33/EU (the "Directive"), and provides that Ireland (the Department of Enterprise Tourism and Employment (DETE)) may grant derogations from the manner in which essential health and safety requirements at point 2.2 of Annex I to the Directive may be achieved. Regulation 7 of the Lifts Regulations transposes the provisions of point 2.2 in Annex 1 of the Directive.

Point 2.2 of Annex I to the Directive states: -

"The lift must be designed and constructed to prevent the risk of crushing when the car is in one of its extreme positions.

The objective will be achieved by means of free space or refuge beyond extreme positions.

However, in specific cases, in affording Member States the possibility of giving prior approval, particularly when lifts are being installed in existing buildings, where this solution is impossible to fulfil, other appropriate means may be provided to avoid this risk."

This guidance sets out information on the procedure for applying to DETE for a derogation under point 2.2 of Annex I to the Directive and the factors that DETE may consider in assessing any application.

2. DETE guidance on point 2.2 of Annex I to the Lifts Directive

The first sentence of point 2.2 sets out the safety objective to be achieved and the second sentence specifies the means to be used to achieve the objective: the objective of preventing the risk of crushing shall be satisfied by means of free space or refuge beyond the extreme positions.

To apply this requirement, the lift well must be provided with a pit below the lowest position that can be reached by the lift carrier and adequate headroom above the highest position that can be reached by the lift carrier in order to enable a person to avoid being crushed in case of unexpected movement of the carrier. The effect of the third sentence of point 2.2 is that, where in exceptional cases it is impossible to fulfil this solution and DETE is satisfied that this is the case, a derogation to the requirement for free space or refuge may be granted, by prior approval and “other appropriate means” of preventing the risk of crushing, may be applied.



In relation to "free space or refuge beyond the extreme positions" as referenced in the second sentence of point 2.2 of Annex I to the Directive, DETE considers that "the extreme positions" means the highest and lowest positions which the lift car can reach in the event of inadvertent over travel (for whatever reason). Such extreme positions might be established by means defined in the specific Harmonised Standards, relevant to safe lift design, to prevent the further movement of the lift car.

"Free space or refuge beyond the extreme positions" is understood as space that is permanently available. The requirement for free space cannot therefore be satisfied by means of protective devices alone. The free space or refuge must have a sufficient volume to enable a person above or below the carrier to be protected against the risk of crushing and it must be possible to attain the free space or refuge in case of unexpected movement of the carrier.

The minimum requirement for the "free space or refuge" beyond the extreme positions can be met by provision of the relevant refuge space requirements as applicable in the latest available versions of harmonised standard.

I.S. EN 81-20 -2020: Safety rules for the construction and installation of lifts - Lifts for the transport of persons and goods - Part 20: Passenger and goods passenger lifts

DETE can only consider applications for derogations from the requirement to provide a permanent "free space or refuge". All the other requirements of the Directive must still be met.

It is for the suppliers of products and, in the case of lifts, those persons taking responsibility for their installation, to consider how the relevant legislation applies to their products/installation and to account, as necessary, for their decisions to the market surveillance/enforcement authorities and, in appropriate cases, to the courts.

If the person taking responsibility for installation of the lift concludes it is **impossible** to provide the minimum requirement of "free space or refuge" - then the following applies:

- An application to DETE for derogation which must address the specific lift installation.
- An independent Chartered Engineer should be engaged to confirm whether a solution involving the provision of free space or refuge beyond the extreme positions, as required by point 2.2 of Annex I of the Directive, is impossible to fulfill.
- The person taking responsibility must engage with all relevant persons to seek a solution to ensure a compliant lift can be installed. A report from the Project Supervisor/Building Designer confirming their agreement and reasoning as to necessity for derogation and their approval of the lift design solution proposed.



- DETE, will require written confirmation from the applicant, that the relevant persons have been involved and it has been concluded and agreed that a lift solution involving “other appropriate means” to avoid the risk of crushing is the only solution.

Responsibility for the lift solution rests with the applicant who is installing the lift. They must ensure a suitable independent Chartered Engineer and relevant experts are engaged. DETE takes no responsibility for the use of a non-compliant lift solution proposed for derogation.

Guidance on documentation required to be provided by an applicant where a derogation is being sought from the free space or refuge requirements of Point 2.2 of Annex I of the Directive, is available in Annex III.

3. Prior derogation

Regulation 7(3) of the European Union (Lifts and Safety Components for Lifts) Regulations 2017, as amended, specifies that where it is impossible to have a refuge or free space beyond the extreme positions of a lift, a person may commence the installation of the lift with reduced headroom **after he or she has sought, and been granted, prior written approval from the Minister**. Derogations under this provision should be sought prior to the installation of the lift, such derogations are meant to be given only in exceptional circumstances regardless of the kind of building concerned.

The solution based on the provision of free space or refuge beyond the extreme positions must be **impossible** to fulfil. “**Impossible**” means either physically impossible i.e. due to constraints imposed by factors such as the presence of gas mains or major electric cables or tunnels, or legal constraints such as those imposed by preservation orders or the refusal of owners of adjacent premises to make more space available.”

It is not an economic concept, so it follows that applications based on differential costs between providing free space or refuge when the lift is in one of the extreme positions and providing another solution cannot be approved. The person seeking the derogation must explain to the satisfaction of DETE, why a free space or refuge beyond the extreme positions is impossible to fulfil.

Harmonised standard:

I.S. EN 81-21:2022 Safety rules for the construction and installation of lifts – Lifts for the transport of persons and goods – Part 21: New passenger and goods passenger lifts in existing buildings,

is one of the means whereby the Directive requirements can be fulfilled.



The harmonised standard describes “other appropriate means” that might be used in existing buildings.

Application of the harmonized standards specifying the “other appropriate means” to prevent the risk of crushing above and below the lift carrier, will confer a presumption of conformity with the Essential Health and Safety Requirements (EHSR) set out in point 2.2, third indent, of Annex I to the Directive, but only in cases where the requirement for free space or refuge is impossible to fulfil and where a derogation has been granted

4. Guidance on how to proceed

Where it is **impossible** to fulfil the requirements around the provision of suitable free space or refuge to prevent the risk of crushing when the lift car is in one of its extreme positions, as specified in Point 2.2 of Annex I of the Directive, an application must be made to DETE seeking a derogation from this requirement under the provisions of Regulation 7(3) of the Lifts Regulations. This is the case whether the installation relates to a new building or an existing building.

An application to DETE for derogation must be made in advance of the lift installation commencing. It is recommended that such applications are made at an early stage by the building owner/designer to avoid delays and to establish feasibility prior to commencing the work. Although the ultimate responsibility for making an application might fall to the lift installer, all parties should recognise that gaining derogation is outside the control of either the building designer or the lift installer and there is no guarantee that a derogation will be issued.

The guidance set out in ANNEXES I and II will assist in the application process.

Where the provision of free space or refuges is possible on new lifts which fully meet the specifications of EN 81-20:2020, and/or the requirements of Annex I of the Directive, no application for derogation to DETE is required.

By applying for a derogation under the provisions of Regulation 7(3) of the Lifts Regulations, it is understood that the installer of the lift has had a full discussion with clients and any other interested parties and that those parties have fully understood the implications with regard to using a lift solution that does not provide full compliance with the point 2.2 of Annex I to the Lifts Directive. The derogation is based on the assumption that clients and any other interested parties have agreed that physical and/or legal restrictions or requirements are such that the installation of a lift in full compliance with point 2.2 of Annex I to the Lifts Directive is not possible and therefore a derogation would be required before a lift can be installed.

In the event that a lift may have been installed where the required free space or refuge beyond the extreme positions has not been provided in full compliance with point 2.2 of Annex I to



the Lifts Directive and a derogation has **NOT** been applied for and/or granted, the installer **must** advise DETE immediately. They should also confirm whether the lift was installed in accordance with the harmonized standard as per this guidance document. DETE, on a case-by-case basis, may consider an application by the installer for a 'special case' review in such instances, submitted in line with this guidance.

Note: Failure to comply with legislative requirements may result in enforcement action up to and including prosecution.

5. New lifts in new and existing buildings

New buildings should be designed, so as to ensure provision of appropriate free space or refuge beyond the extreme positions of the lift car and that this must be a priority over other such considerations such as cost or architectural preference.

The Minister of DETE may grant prior derogation only in very exceptional circumstances for a new building, such as the discovery of an archaeological site remains of such significance that it would be reasonable to require their preservation in situ.

Both for new and existing buildings, consultants and building designers should be cognisant of the requirements of Regulation 15 of the Safety, Health and Welfare at Work (Construction) Regulations 2013 to 2021 and must avoid the hazard of reduced refuge spaces if at all possible.

6. Considerations before making an application for a derogation under point 2.2 of Annex I to the Directive

The following points should be considered prior to making any application to the Minister of DETE for a derogation. They also need to be addressed in any application.

Is it **"impossible"** to obtain sufficient clearances to allow the required free space or refuge to be achieved, **or** is the application being made to avoid inconvenience and greater cost associated with modifying the building or lift design? Evidence from a Chartered Engineer to support the position must be provided.

Have building-related options been fully explored by the building designer with the involvement of the lift specialist? e.g. positioning the lift where increased clearances are available or extending pit and/or headroom clearances as required.

Have lift design-related options to maximise refuge spaces been fully explored?

If the design does not comply with a harmonised standard, has the proposed lift installer discussed their proposed solution with their Notified Body to the Notified Body's satisfaction?



What are the special circumstances relating to an “Existing Building”? i.e. the presence of significant archaeological remains below the building, the architectural, historical and/or archaeological significance of the building itself, or interference with protected wildlife.

When submitting a proposal for the Minister’s consideration the applicant should document as fully as possible the reasons why a solution based on free space or refuge beyond the extreme position is impossible to fulfil.

A list of required documentation to accompany any application is prescribed in ANNEX III.

7. Granting of a Derogation

DETE have no responsibility for the safety of design solutions achieved through “other appropriate means”.

It should also be noted that where the granting of a derogation is accorded by the Minister, the evaluation of “other appropriate means” used to prevent the risk of crushing, above and below the lift carrier, remains subject to the conformity assessment procedures set out in Article 16 of the Lifts Directive.

The granting of a derogation does **not** constitute approval of the proposed solution that the lift installer may select to achieve compliance. Any derogation granted is accorded on the basis that the installer of the lift has full responsibility to ensure the safety of the solution adopted and compliance with relevant statutory provisions. All applications for derogations will be considered by the Minister on a case-by-case basis, based on information provided in support of the application.

CONDITIONS APPLYING TO DEROGATIONS GRANTED BY DETE

In respect of derogations which may be granted by DETE in relation to the construction and installation of new passenger lifts, it is important to note that the granting of any such derogations will be subject to a number of conditions including, but not limited to, the following:

Lifts in Existing Buildings

1. The installation of lifts in existing buildings must comply with the harmonized standard: I.S. EN 81-21:2022 ‘Safety rules for the construction and installation of lifts - Lifts for the transport of persons and goods – Part 21: New passenger and goods passenger lifts in existing building’, or the latest available version of that standard, reference to which has been published in the Official Journal of the European Union (OJEU), and,



2. Prior to putting the lift into service, the lift installer must arrange a final inspection / verification of the lift by a Notified Body to verify compliance with EN 81 – 21:2022. Written confirmation from the appointed notified body is required and must be obtained.
3. Information for use, including notices and warnings, referenced in I.S. EN 81-21:2022, must be in place when installed and prior to use to inform and warn relevant persons with regard to any reduction in available refuge space to ensure they are aware of the risks when the lift is in use or when lift maintenance is being planned and undertaken.

Lifts in New Buildings (Derogation will only be granted in very exceptional cases)

1. The installation of lifts in new buildings must comply with the EHSR of the Lift Directive and be approved by a relevant Notified Body (EU Design Examination Certificate).
2. Prior to putting the lift into service, the lift installer must arrange a final inspection / verification of the lift by a Notified Body to verify compliance with the ESHR. Written confirmation of this from the appointed Notified Body must be obtained.
3. Information for use, including notices and warnings, must be in place when installed and prior to use, to inform and warn relevant persons with regard to any reduction in available refuge space to ensure they are aware of the risks when the lift is in use or when lift maintenance is being planned and undertaken.

8. Safety, Health and Welfare at Work Act, 2005

Separate to any derogation granted, to ensure the safety of personnel over the lifetime of the lift, adequate arrangements must be implemented and maintained to ensure compliance with all relevant occupational safety, health and welfare at work statutory provisions.

Lift installations with reduced refuge spaces may pose additional risk should appropriate controls not be implemented and maintained throughout the lifetime of the lift. It is therefore imperative that such lifts are the subject of a specific occupational safety and health hazard identification and risk assessment process, undertaken in line with the requirements of Section 19 of the Safety, Health and Welfare at Work Act, 2005. The risk assessment undertaken should consider all hazards associated with the operation of the lift, including inspection and maintenance activities. Adequate protective and preventative measures must be in place to



mitigate risks to safety, health and welfare. Suitable controls should be put in place to ensure the safety of all concerned, these should include the provision of information and signage, training of relevant personnel (including external contractors) and any other controls deemed necessary. Safety Statements prepared in accordance with Section 20 of the Safety, Health and Welfare at Work Act, 2005 should be updated accordingly.

Applications for consideration under the third sentence of point 2.2 of Annex I to the Directive should be addressed to:

Safety, Health and Chemical Policy Unit,
Department of Enterprise, Tourism and Employment,
Earlsfort Centre, Lower Hatch Street,
Dublin 2,
D02 PW01

healthandsafetypolicy@enterprise.gov.ie



Annex I

PROCEDURES TO BE ADOPTED FOR NEW LIFTS INSTALLED WHERE PERMANENT REFUGE SPACES ARE NOT POSSIBLE TO ACHIEVE IN NEW AND EXISTING BUILDINGS:

	<i>Permanent refuge spaces as prescribed in EN 81-20:2020 clauses 5.2.5.6, 5.2.5.7 and 5.2.5.8 are <u>NOT POSSIBLE</u> to achieve in either pit or headroom.</i>
<i>New Lift in a New Building</i>	Note: Derogation from the legislative provisions in a new building will be granted only in very exceptional circumstances. A higher level of justification, than that required for an existing building, is needed. An opinion (in writing) from an independent Chartered Engineer is required to confirm why the solution involving the provision of free space or refuge is ‘impossible’ to fulfill. This written opinion will form part of any application. A report from the Project Supervisor/Building Designer confirming their agreement and reasoning as to necessity for derogation and their approval of the lift design solution proposed. Application for a derogation with the relevant documentation (Annex III) may then be made to DETE. As the lift design deviates from the harmonised standard (EN 81-20:2020), Notified Body approval (EU Design Examination Certificate) is also required. The application should include an evaluation of the “other appropriate means” used to prevent the risk of crushing above and below the lift carrier remains subject to the conformity assessment procedures set out in Article 16 of the Lifts Directive.

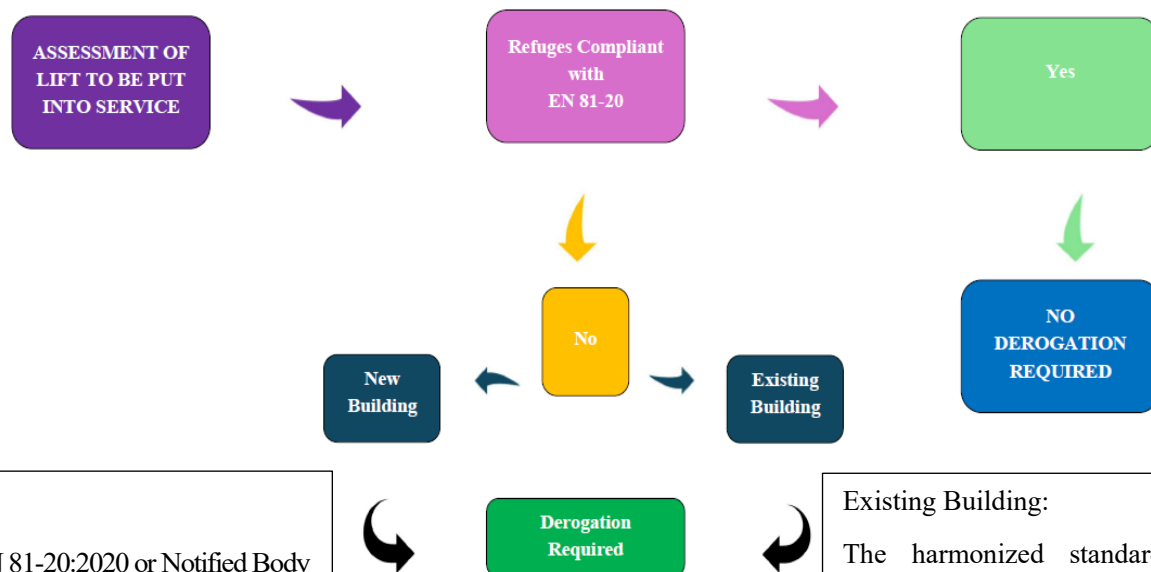


	<i>Permanent refuge spaces as prescribed in EN 81-20:2020, clauses 5.2.5.6, 5.2.5.7 and 5.2.5.8 are <u>NOT POSSIBLE</u> to achieve in either pit or headroom.</i>
<i>New Lift in an Existing Building</i>	An opinion (in writing) from an independent Chartered Engineer as to whether the solution involving the provision of free space or refuge is impossible to fulfill. This written opinion will form part of any application. A report from the Project Supervisor/Building Designer confirming their agreement and reasoning as to necessity for derogation and their approval of the lift design solution proposed. Application for a derogation with the relevant supporting documentation (Annex III) may be made to DETE in compliance with harmonised standard EN 81-21:2022. The harmonized standard EN 81-21:2022 describes other appropriate means that might be used in existing buildings. Application of its specifications will confer a presumption of conformity with the EHSR set out in Point 2.2, third indent of Annex I of the Directive only in cases where the requirement for free space or refuge is impossible to fulfill and where a derogation has been granted by DETE. Comply with Article 16(1) of the Directive.



Annex II

TO DETERMINE IF DEROGATION IS REQUIRED:



New Building:

Compliance with harmonised standard EN 81-20:2020 or Notified Body approval sought.

Compliance with Article 16(1) of the Directive which sets out the choice of conformity assessment procedures for lifts and describes the steps that must be followed before a lift is placed on the market and put into service. For every lift, the conformity of the lift design with the essential health and safety requirements (EHSR) of the Directive must be assessed and the conformity of the lift installation with the approved lift design must be checked.

Prior to putting the lift into service, the lift installer must arrange a final inspection / verification of the lift by a relevant Notified Body to verify compliance with EHSR of the Lifts Directive. Written confirmation from the appointed Notified Body must be obtained.

Existing Building:

The harmonized standard EN 81-21:2022 describes other appropriate means that may be used in existing buildings. Application of the specifications of EN 81-21:2022 relating to the “*other appropriate means*” to prevent the risk of crushing above and below the carrier will confer a presumption of conformity with the EHSR set out in point 2.2, third indent of Annex I of the Directive **only** in cases where the requirement for free space or refuge is impossible to fulfill and where prior approval has been granted by DETE.

Prior to putting the lift into service, the lift installer must arrange a final inspection / verification of the lift by a Notified Body to verify compliance with EN 81 – 21:2022. Written confirmation from the appointed Notified Body must be obtained and retained.



Annex III

DOCUMENTS TO BE PROVIDED BY THE APPLICANT WHERE DEROGATION IS BEING SOUGHT FROM POINT 2.2 OF ANNEX 1 OF LIFTS DIRECTIVE 2014/33/EU WITH REGARD TO REFUGUE SPACE REQUIREMENTS:

The following documents are required as part of an application for a lift derogation. It is the responsibility of the applicant to collate and submit the documentation to DETE.

1. A declaration from an independent Chartered Engineer, confirming that a solution involving the provision of free space or refuge beyond the extreme positions, as required by point 2.2 of Annex I of the Lifts Directive, is impossible to fulfill.
2. A report document from an independent Chartered Engineer justifying the requirement for a derogation, clearly specifying the reasons why a derogation is being sought. The report should show that all known design and engineering options have been explored and discussed in trying to comply with point 2.2 of Annex I of the Lifts Directive and EN 81-20.
3. A report document from the Project Supervisor/Building Designer confirming their agreement and reasoning as to necessity for derogation and their approval of the lift design solution proposed.
4. A report document showing that all relevant people have been involved in related discussions and confirming the lift design solution as the only viable option in the particular circumstances.
5. A statement from the Lift Specialist / Manufacturer with all appropriate supporting documentation to show that they have discussed and approved the lift design solution with their Notified Body.
6. A statement from the appointed Notified Body confirming that they have reviewed the lift design solution and are in agreement.
7. A dimensioned layout drawing showing the lift shaft and refuge spaces, and the lift design solution. For the construction and installation of a new passenger and goods lifts in existing buildings the lift design solution to minimise the risk of crushing must meet with the provisions of EN 81-21:2022 and a report document confirming the application of these specifications must accompany any application.