

# NAFLIC

National Association For Leisure Industry Certification

## Standards & Related Documents Sub-Committee

### TECHNICAL BULLETIN - JANUARY 1994

#### 072. Conditions of Supply of Imported Rides

##### 072.1 General

Some NAFLIC members tell us that they are sometimes asked to advise prospective purchasers of the steps they should take to satisfy UK requirements when importing or purchasing imported amusement rides. It is NAFLIC's belief that there is a lot of confusion on this matter and consequently this subcommittee has been asked to prepare a Technical Bulletin giving guidance.

The main relevant legislation is section 6 of the Health and Safety at Work etc. Act 1974 (as amended by the Consumer Protection Act 1987). Guidance is also included in "Fairgrounds and Amusement Parks - A Code of Safe Practice" (henceforth referred to as the Code), its Technical Annex, and other documents, standards etc.

It is the duty, under UK law, of any person who designs, manufactures, imports or supplies any *article of fairground equipment* to ensure that it is so designed and constructed that it will be safe and without risks to health at all times when it is being used to entertain the public or being maintained etc [HSW Act Section 6 - paragraph (a) of subsection (1A) and paragraph (a) of subsection (1)].

In the case of equipment designed outside the UK the importer, who in the absence of an intermediary may well be the owner or proprietor, inherits most of the legal duties of the designer and manufacturer [HSW Act Section 6 - subsection (8A)]. The same subsection stipulates that an importer cannot, in general, pass on these duties down the chain of supply even on the basis of a written disclaimer. He may, however, seek professional help to fulfill these duties [HSW Act Section 6 - paragraphs (b) of subsections (1) and (1A)].

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<sup>1</sup> *Article of fairground equipment* means any fairground equipment, or any article designed for use as a component in any such equipment.

*Fairground equipment* covers any fairground ride or similar plant to entertain customers on or inside it, including equipment for sliding or bouncing on and equipment such as swings and dodgems which is controlled to some extent by the customer. It excludes equipment such as pinball and video machines and side-stalls.

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## **072.2 Duties with Respect to Design**

An importer must ensure that the *design*<sup>2</sup> will be safe and without risks to health and, to achieve this, he must carry out or arrange for the carrying out of appropriate reviews of the design work carried out by the foreign designer [HSW Act Section 6 - paragraphs (b) of subsections (1) and (1A)]. This needs to be assessed against British criteria since the HSW Act implies that importers should provide the same standards of safety and information as British suppliers while the Code expects imported equipment to follow its requirements [Code paragraph 42].

For passenger carrying amusement devices the Code requires the complete design specification and, where necessary, associated calculations to be submitted to an independent consulting engineer to establish that the design concept is sound and that the calculations are correct [Code paragraph 16]. This is the process referred to as "Design Review". Although the Code is nominally *voluntary*<sup>3</sup> it is adopted by virtually all of the UK industry. It therefore seems to us likely that the courts would consider that an importer should submit his equipment to independent design review against UK criteria since this is the standard expected of domestic suppliers. If he does not, he needs to provide "equally effective measures".

One often confused fact is that the HSW Act does not permit an importer to assume that the design safety of an article of fairground equipment is satisfactory just because it has been the subject of a Design Review by a non-UK body, such as a TÜV for instance. He may, though, consider how far it is reasonable to rely on the reported results of the earlier Design Review so as to avoid unnecessary repetition [HSW Act Section 6 - subsection (6)]. See also 072.6 below.

## **072.3 Duties with Respect to Construction**

As well as the safety of the design an importer has to ensure that the construction of the device is satisfactory [HSW Act Section 6 - paragraphs (a) of subsections (1) and (1A)]. If it is also wished to comply with the Code an amusement device must be manufactured in conformity with a specification that has been the subject of Design Review [Code paragraph 34].

It is clear then that, for equipment manufactured outside the UK, the importer "carries the can" for the quality of manufacture conforming to a design specification acceptable in the UK. He must ensure, and in the event of prosecution would presumably be required to demonstrate in a court of law what steps he had taken to ensure that the manufacturer has constructed the device to guarantee a level of safety acceptable in the UK when in use. Because of this heavy responsibility some importers (sometimes at the request of the purchaser) use independent

<sup>2</sup> *Design* has a meaning specified in the Code which covers all aspects of the device's specification and associated calculations and implies all safety related disciplines.

<sup>3</sup> "Although this code does not on its own have the force of either law or an approved Code of Practice, the Health and Safety Executive has instructed its inspectors to take it into account when considering whether there is compliance with statutory requirements. Failure to follow the guidance or to provide other equally effective measures may lead to action by inspectors ranging from advice and warnings to the issue of enforcement notices or even prosecutions, although ultimately it is for a court or tribunal to decide whether there has been compliance with the law." - Foreword to the Code.

specialists, i.e. some NAFLIC members, to carry out conformity inspections. These elements of expertise and independence can have the additional advantage of providing greater reassurance to prospective purchasers than the importer can provide in his own right.

#### **072.4 Duties with Respect to Initial Test**

It is a generally accepted fact that some aspects of the safety of an amusement device's design and construction are best demonstrated by functional test runs. (Kin) (and other safety related) systems, for instance, immediately leap to mind.

The HSW Act does not prescribe what testing should be carried out before first use of an article of fairground equipment - the designer, manufacturer, importer or supplier has the responsibility of deciding what is called for [HSW Act Section 6 - paragraphs (b) of subsections (1) and (1A)]. For imported equipment the responsibility for ensuring that the tests are suitable and the results are satisfactory rests upon the importer even if the manufacturer comes to the UK to carry them out [HSW Act Section 6 - subsection (8A)]. The Code requires an "Initial Test" to be carried out by or on behalf of the manufacturer. There is an additional requirement that the certificate of initial test should be verified by a competent third party [Code paragraphs 89 and 90].

An importer therefore has the responsibility of deciding (or arranging for help in deciding) what testing and examination is necessary to ensure safety so far as is reasonably practicable. It is not sufficient for an importer to assume that the testing of an article of fairground equipment has been satisfactory just because it has been the subject of an Initial Test by a non-UK manufacturer or other body, such as a TÜV, for instance. It may, though, consider how far it is reasonable to rely on the reported results of such an Initial Test so as to avoid unnecessary repetition [HSW Act Section 6 - subsection (6)]. See also 072.4 below.

#### **072.5 Requirements**

On the basis of the preceding discussion it is our view that compliance with UK requirements for the importation of articles of fairground equipment will involve the importer in :

- ◆ Design Review
- ◆ Inspection of Conformity to Design
- ◆ Initial Test

To carry out these tasks the importer (or a NAFLIC member assisting him to comply) will need to seek a great deal of information from the overseas designer and manufacturer. We also believe that if it is known that previous reports (e.g. TÜV) on the device are in existence, every effort should be made to obtain copies.

We are aware that some NAFLIC members issue "Conditions of Supply" which specify the documentation which an importer should insist on as part of an agreement to purchase an article of fairground equipment. This may also specify that English translations be provided. (If they are not provided then, clearly, the importer will have to seek translation in the UK). We note that, without this, it is usual to be supplied with data which is incomplete and insufficient to demonstrate the required level of safety without a considerable amount of extra work.

### **072.6 Notes on the Acceptability of non-UK Reports**

In the case of imported equipment which has been the subject of previous independent design review or inspection or test to non-UK legislation, standards, etc., the design documents should ideally be accompanied by the reports (together with English translations) issued by the bodies which carried out this earlier work.

The HSW Act sensibly permits some use to be made of these reported results so as to avoid unnecessary repetition. However, it is a requirement that the importer (or his agent) must consider how far it is reasonable to rely upon the reported results to satisfy UK criteria. He need then only carry out the additional work to fulfill the unsatisfied criteria. [HSW Act Section 6 - subsection (6)].

The subcommittee are aware that there are significant differences between the standards and methods of design and manufacture of fairground equipment throughout the world. There are also national differences in the procedures expected in review, testing and examination. We consider that it is very much a matter of knowledge and experience to decide what additional work should be carried out. We do not consider it appropriate to discuss such detail in this Technical Bulletin.

### **072.7 Conclusion**

The NAFLIC Standards & Related Documents Sub-Committee have prepared this Technical Bulletin with the intention of providing an informed interpretation of requirements regarding imported articles of fairground equipment. We do not claim that this interpretation is the complete picture and we are aware that there may be other ways of complying with the law - the courts, after all, will ultimately decide. We are not willing for this Technical Bulletin to be relied upon or quoted as proof of compliance with the HSW Act and point out that persons reading this viewpoint should seek their own independent advice as to whether they comply.

**PLEASE NOTE THIS REFERENCE IS NOW SUPERSEDED BY HSC(G81)**