

Subsidiary Legislation made under s. 337(d).

## **Public Health (Safety of Fairground Equipment) Rules, 1999**

**LN.1999/016**

	<i>Commencement</i>	<b>25.2.1999</b>
Amending enactments	Relevant current provisions	Commencement date
L.N. 2001/098 r. 4		9.8.2001

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**ARRANGEMENT OF RULES**

Rule

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**Title**

1. These Rules may be cited as the Public Health (Safety of Fairground Equipment) Rules, 1999.

**Interpretation.**

2. In these Rules, unless the context otherwise requires –

“article of fairground equipment” means any fairground equipment or any article designed for use as a component in any such equipment and “article” shall be construed accordingly;

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

“credit-sale agreement” means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement;

“fairground equipment” means any fairground ride, any similar plant which is designed to be in motion for entertainment purposes with members of the public on or inside it or any plant which is designed to be used by members of the public for entertainment purposes either as a slide or for bouncing upon, and in this definition the reference to plant which is designed to be in motion with members of the public on or inside it includes a reference to swings, dodgems, and other plant which is designed to be in motion wholly or partly under the control of, or to be put in motion by, a member of the public;

“hire-purchase agreement” means an agreement other than a conditional sale agreement, under which -

- (a) goods are bailed; and
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs:
  - (i) the exercise of an option to purchase by that person;

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(ii) the doing of any other specified act by any party to the agreement;

(iii) the happening of any other event;

and “hire-purchase” shall be construed accordingly;

“operator” means the person having the management of fairground equipment for the time being, or in relation to a time, at that time;

“plant” includes any machinery, equipment or appliance;

“supply”, where the reference is to supplying an article of fairground equipment means supplying it by way of sale, lease, hire or hire-purchase, whether as principal or agent for another.

**General duties of manufacturers etc as regards articles of fairground equipment**

3.(1) It shall be the duty of any person who designs, manufactures, imports, supplies or operates any article of fairground equipment –

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being set, used, cleaned or maintained by a person at work;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by the preceding paragraph;
- (c) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all such times as are mentioned in paragraph (a) and when it is being dismantled or disposed of; and
- (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of the preceding paragraph as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.

(2) It shall be the duty of any person who designs, manufactures, imports, supplies or operates any article of fairground equipment –

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public;
  - (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by the preceding paragraph;
  - (c) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public; and
  - (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of the preceding paragraph as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.
- (3) It shall be the duty of any person who undertakes the design or manufacture of any article of fairground equipment to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the design or article may give rise.
- (4) It shall be the duty of any person who erects or installs any article of fairground equipment to ensure, so far as is reasonably practicable, that nothing about the way in which the article is erected or installed makes it unsafe or a risk to health at any such time as is mentioned in paragraph (a) of sub-rule (1) or, as the case may be, in paragraph (a) of sub-rule (2).
- (5) Nothing in the preceding provisions of this rule shall be taken to require a person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purposes of those provisions.
- (6) Any duty imposed on any person by any of the preceding provisions of this rule shall extend only to things done in the course of a trade, business or other undertaking carried on by him (whether for profit or not) and to matters within his control.
- (7) Where a person designs, manufactures, imports or supplies an article of fairground equipment and does so for or to another on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is reasonably practicable, that the article will

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be safe and without risks to health at all such times as are mentioned in paragraph (a) of sub-rule (1) or, as the case may be, in paragraph (a) of sub-rule (2), the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed by virtue of that paragraph to such extent as is reasonable having regard to the terms of the undertaking.

(8) Nothing in sub-rule (6) or (7) shall relieve any person who imports any article of fairground equipment from any duty in respect of anything which—

- (a) in the case of an article designed outside Gibraltar, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who designed the article; or
- (b) in the case of an article manufactured outside Gibraltar, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who manufactured the article.

(9) Where a person (“the ostensible supplier”) supplies an article of fairground equipment to another (“the customer”) under a hire-purchase agreement, conditional sale agreement or credit-sale agreement, and the ostensible supplier—

- (a) carries on the business of financing the acquisition of goods by others by means of such agreements; and
- (b) in the course of that business acquired his interest in the article supplied to the customer as a means of financing its acquisition by the customer from a third person (“the effective supplier”),

the effective supplier and not the ostensible supplier shall be treated for the purposes of this rule as supplying the article to the customer, and any duty imposed by the preceding provisions of this rule on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(10) For the purposes of this rule an absence of safety or a risk to health shall be disregarded in so far as the case in or in relation to which it would arise is shown to be one the occurrence of which could not reasonably be foreseen; and in determining whether any duty imposed by virtue of paragraph (a) of sub-rule (1) or (2) has been performed regard shall be had to any relevant information or advice which has been provided to any person by the person by whom the article has been designed, manufactured, imported or supplied.

### **Authorised persons**

4. The Chief Secretary may authorise by notice in the Gazette such person or persons\* as he sees fit to exercise powers under section 320 of the Public Health Act for all purposes with the administration of these Rules.

**Offences**

5.(1) It is an offence for a person to fail to discharge a duty which he is subject to by virtue of rule 3.

(2) A person guilty of an offence under sub-rule (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding three months or to both a fine and imprisonment.

**Onus of proving limits of what is practicable etc.**

6. In any proceedings for an offence under these rules consisting of a failure to comply with a duty or a requirement to do something so far as is reasonably practicable, it shall be for the accused to prove (as the case may be) that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

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\* LN. 2004/049– Mr Hubert McKay, Chartered Structural Engineer with the Technical Services Department.

\* LN. 2010/100– Michael Caetano, Chartered Electrical Engineer

\* LN. 2011/042 –Mr Ian Payas, Mechanical Engineer