



An Roinn Gnó,  
Fiontar agus Nuálaíochta  
Department of Business,  
Enterprise and Innovation

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

Guidance on application and on applying to Department of Business, Enterprise and Innovation for derogation under Annex I, Essential Health and Safety Requirements Point 2.2, Directive 2014/33/EU on the on the harmonisation of the laws of the Member States relating to lifts and safety components for Lifts

Department of Business, Enterprise and Innovation  
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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", transposing the EU Lifts Directive 2014/33/EU (the "Directive"), provide that Ireland (the Department for Business, Enterprise and Innovation (DBEI)) may grant derogations from the manner in which essential health and safety 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.

Throughout this guidance, references are made to the Lifts Directive.

Point 2.2 of Annex I to the Directive and 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 the extreme positions.

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

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

## 2. DBEI guidance point 2.2 of Annex I to the Directive

The first sentence indicates the risk to be addressed and the second sentence specifies the means by which that risk is to be prevented wherever it is possible to do so. The effect of the third sentence is that, where it is impossible to adopt these means and DBEI is satisfied that this is the case, other appropriate means of preventing the risk of crushing may be used.

In relation to "free space or refuge beyond the extreme positions" in the second sentence, DBEI 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.

The extreme position determining the "free space or refuge" described in these standards also considers that ascending lift cars supported by ropes and chains may continue to travel upwards momentarily, even though the counterweight buffers have been fully compressed or their hydraulic jacks have reached the extremities of their strokes.



“The minimum requirement for the "free space or refuge" can be met by provision of the relevant refuge space requirements as applicable in the latest available versions of harmonised standards:

*CEN - EN 81-20 - Safety rules for the construction and installation of lifts - Lifts for the transport of persons and goods - Part 20: Passenger and goods passenger lifts*

*CEN - EN 81-21 - 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”*

DBEI can only consider applications for derogations from the requirement to provide a permanent "refuge" space and that all the other linear dimensions indicated in relevant harmonised standards should be respected or approval sought from a Notified Body that the design of the lift meets the Essential Health and Safety Requirements of the Directive.

Guidance general application of the Directive:

- It is for the suppliers of products and, in the case of lifts, those persons taking responsibility for their installation to assess 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<sup>1</sup>.
- 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 apply:
- The person taking responsibility must undertake a discussion with all relevant persons to seek a solution where a compliant lift can be installed.
- The application to DBEI for derogation must address a specific case of lift installation.
  - DBEI will require confirmation from the applicant that the relevant persons have been involved and agreed that a lift solution less satisfactory than a fully compliant lift is the only solution.

DBEI takes no responsibility for the use of a non-compliant lift solution; responsibility rests with those installing the lift.

3. **Prior derogation** only will be given. Derogations sought subsequent to construction/ installation will not meet the requirement in point 2.2 of Annex I to the Directive and cannot be issued (see Notes below). Derogations are meant to be given only in exceptional circumstances regardless of the kind of building concerned.

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<sup>1</sup> DBEI might have a view on the position but this would not have the force of law: the interpretation of legislation is a matter for the courts and, in respect of EU Directives, ultimately the European Court of Justice.



**The solution** based on the 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 DBEI prior derogation must explain to DBEI's satisfaction why their conclusion that the solution, based on free space or refuge at the extreme positions being impossible to fulfil, is a well-founded one.

#### 4. **Guidance on how to proceed**

Where the permanent refuge spaces are not available for a new lift, then an application to DBEI for a prior derogation must be made.

If refuge spaces are available on new lifts in new buildings which are fully in conformity to EN 8120:2014 or, only for new lifts in existing buildings, to EN 81-21 (once published and harmonised), no application to DBEI is required.

It is recommended that application is 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 lift installer and that derogation might not be obtained. The guides set out in ANNEXES I and II will assist in this process.

By applying for this derogation it should be 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 for safety 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 fully compliant with point 2.2 of Annex I to the Lifts Directive is not possible and therefore that a derogation is appropriate.

#### 5. **New lifts in new buildings**

It follows from the above that DBEI would 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. New buildings must be designed, except in very exceptional circumstances, so as to provide enough space for compliant lifts and that this must be a priority over other such considerations such as cost or architectural preference.

In such a situation, consultants and building designers should be cognisant of Regulation 15 of the Safety, Health and Welfare at Work (Construction) Regulations 2013 and 2019:

15. (1) In carrying out work related to the design of a particular project, a designer shall—



- (a) take account of—
  - (i) the general principles of prevention, and
  - (ii) the relevant—
    - (I) safety and health plan, and
    - (II) safety file

prepared in accordance with these Regulations, and

- (b) provide in writing to the project supervisor for the design process all relevant information necessary for the project supervisor to carry out the project supervisor's duties under these Regulations.

(2) In carrying out work related to the design of a particular project, a designer shall—

- (a) co-operate with the project supervisor for the design process or the project supervisor for the construction stage, as appropriate, to enable that project supervisor to comply with these Regulations,
- (b) co-operate with other designers, as appropriate, to enable them to comply with these Regulations in relation to the project, and
- (c) comply with all directions from the project supervisor for the design process or the project supervisor for the construction stage, that are issued pursuant to Regulation 14 or 20, as appropriate.

(3) In carrying out work related to the design of a particular project, a designer shall promptly provide in writing to the project supervisor for the design process or for the construction stage, whichever is appropriate, all information—

- (a) about the project that is known to the designer regarding particular risks to the safety, health and welfare of persons at work, including but not limited to the risks referred to in Schedule 1,
- (b) regarding the nature and scope of the project to the extent necessary to enable the project supervisor to comply with these Regulations,
- (c) about the project that is necessary for that project supervisor to prepare the safety file, and
- (d) that is known to that person and is necessary to ensure, so far as is reasonably practicable, the safe construction of the design for the project.

(4) For the purposes of paragraph (3), if no project supervisor is known to the designer to have been appointed for the project, the designer shall provide the information referred to in that provision to the appropriate contractor instead of to a project supervisor.



- (5) If a designer is not aware of the appointment of a project supervisor for the design process, the designer shall promptly inform the client of the client's duties under Regulation 6.

In this context, provision of sufficient building space for the lift to have adequate permanent refuge spaces for those maintaining the lift is clearly higher priority in the hierarchy (since it addresses the crushing hazard) than requiring the lift contractor to mitigate the risks passed to them from the building designer.

## 6. New lifts in existing buildings

Despite the majority of applications being in relation to existing buildings, designers continue to have the same responsibilities under Safety, Health and Welfare at Work (Construction) Regulations 2013 (S.I. No. 291 of 2013) and must avoid the hazard if possible and, if this is not possible, mitigate the risk through design and by maximising available refuge spaces.

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

The following are suggestions for the points which should be considered before deciding whether to make an application to DBEI for a prior derogation and which should be addressed in such an application. An application should not be made unless these points can be addressed adequately.

1. Is it "impossible" to obtain sufficient clearances to allow the refuge spaces to be achieved or is the application being made to avoid inconvenience and greater cost associated with modifying the building or lift design? This argument should be provided by the building owner/ designer since the lift contractor or Notified Body would not usually be in a position to do so.
2. Have building related options been fully explored e.g. positioning the lift where increased clearances are available or extending pit and/ or headroom clearances as required? This is primarily by the building designer with some involvement from a lift specialist.
3. Have lift design related options to maximise refuge spaces been fully explored (e.g. by reducing rated speed, reducing car height (but not below 2 m), alternative design for car frame etc.)?
4. If the design does not comply with a harmonised standard, has the proposed lift installer discussed their proposed solution with their Notified Body?
5. 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.



Note: The application should include details of the Notified Body to be used by the proposed lift installer.

A dimensioned drawing showing the refuge spaces would usually be required in support of an application. As far as possible, risk assessments and other relevant documents and drawings should be assembled to support the application. A list of expected documentation to accompany any application is prescribed in ANNEX III.

When submitting a proposal for 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. If the applicant's representations are such as to leave any doubt as to the impossibility of adopting a solution based on free space or refuge, it could result in further questions being asked and could further delay the process.

Applicants do not need to address 'other appropriate means' they would propose to use in the event of their application for a prior derogation being successful. DBEI will take no responsibility for the safety of design solution selected. The granting of a derogation **does not** constitute approval of any possible solution that the lift installer may have already selected in order to address the non-compliance. Any derogation granted is granted on the basis that the installer of the lift has full responsibility to ensure the safety of the solution that will be used to address the non-compliance. It should be understood that the responsibility for the lift installation remains with the installer as set out in the Lifts Directive and not with DBEI.

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

Safety, Health and Chemicals Policy Unit,  
Department of Business, Enterprise and Innovation,  
Earlsfort Centre, Lower Hatch Street,  
Dublin 2, D02 PW01

[healthandsafetypolicy@dbei.gov.ie](mailto:healthandsafetypolicy@dbei.gov.ie)



## Annex I

### PROCEDURES TO BE ADOPTED

For lifts installed (put into service) from 1<sup>st</sup> September 2017

	Permanent refuge spaces defined in EN 81-20: 2014, clauses 5.2.5.7.1 and 5.2.5.8.1, can be accommodated in pit and headroom	Permanent refuge spaces defined in EN 8120:2014, clauses 5.2.5.7.1 and 5.2.5.8.1, can NOT be accommodated in either pit or headroom
New Lift in a new building	Comply with harmonised standard EN 81-20:2014 Or Notified Body approval (EU Type Examination or EU Design Examination Certificate).	Note derogation from DBEI would be granted only in exceptional circumstances in a new building and so a higher level of justification may be needed.  Assemble documentation in support of application.  Apply for derogation from DBEI.  Seek Notified Body approval (EU Design Examination Certificate) since the design deviates from the harmonised Standards



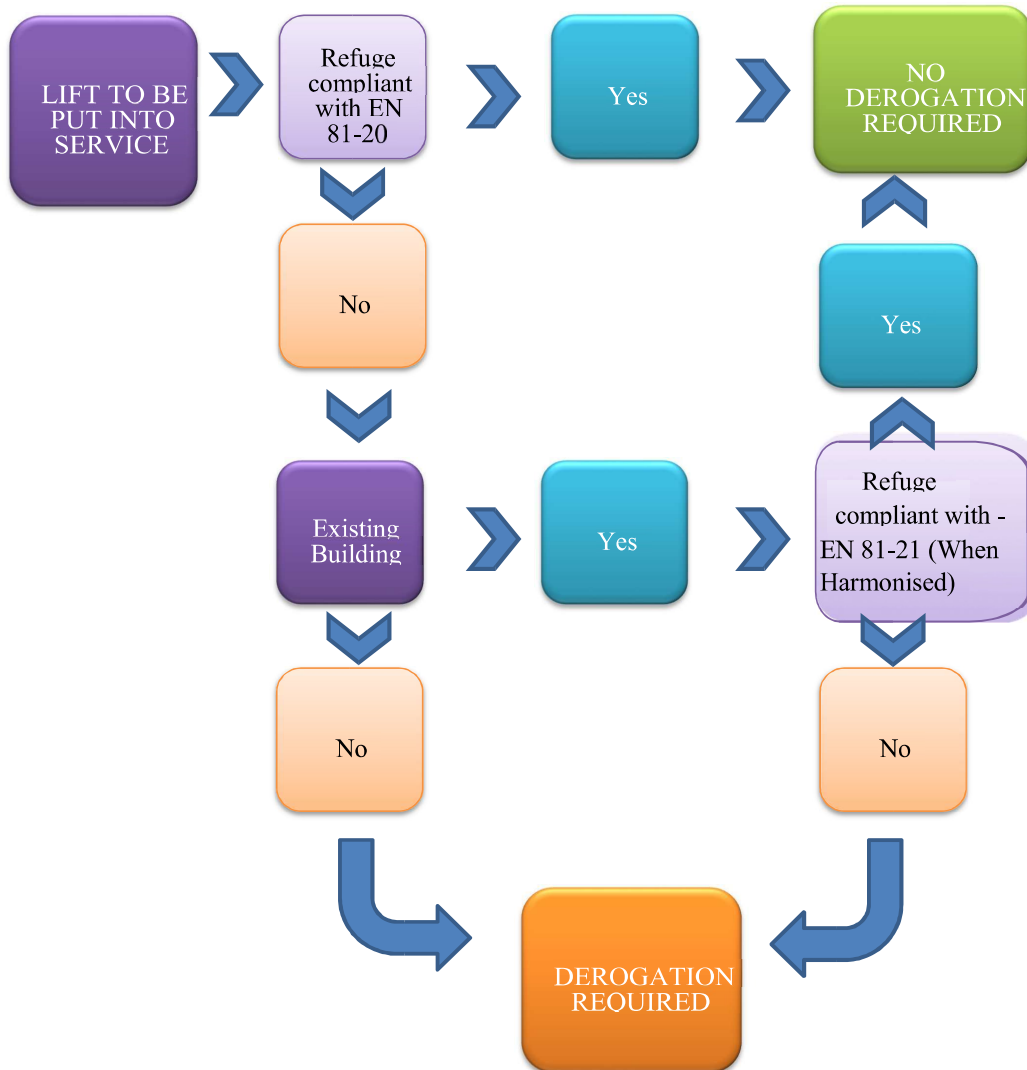


	Permanent refuge spaces defined in EN 81-20: 2014, clauses 5.2.5.7.1 and 5.2.5.8.1, can be accommodated in pit and headroom	Permanent refuge spaces defined in EN 8120:2014, clauses 5.2.5.7.1 and 5.2.5.8.1, can NOT be accommodated in either pit or headroom
New Lift in an existing Building	Either Comply with harmonised standard EN 81-20:2014  Or Notified Body approval (EU Type Examination or Design Examination Certificate).	Option 1 Comply with EN 81-21: once published and harmonized  Option 2 Assemble documentation in support of application.  Apply for derogation from DBEI. And seek Notified Body approval (EU Type Examination or Design Examination Certificate where the design deviates from EN 81-20:2014 or EN 81-21 once published and harmonized  Refuge spaces shall not be less than as prescribed in EN 81-21 when harmonised



## ANNEX II

To determine if derogation is required





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## ANNEX III

Documents to be provided by the Applicant where derogation is being sought from clause 2.2 of Annex 1 of Lifts Directive 2014/33/EU with regard to free refuge space requirements.

It is the responsibility of the Applicant to collate and submit the following documents in an application package.

1. A report document from the Project Supervisor/Building Designer justifying the requirement for a derogation and showing that all known design and engineering options have been explored and discussed in trying to provide a compliant lift to EN 81-20 or EN 81-21<sup>2</sup>, and
2. A report document showing that all relevant persons have been involved in discussion and confirming the lift design solution as the only viable option in the particular circumstances, and
3. (a) A statement from the Lift Specialist / Manufacturer with all appropriate support documentation to show that they have discussed and approved the lift design solution with their Notified Body. (b) A statement from their Notified Body confirming that they have reviewed the lift design solution and are in agreement, and
4. A dimensioned layout drawing for the lift design solution. The lift design solution must include a list of additional safety features and test descriptions required in EN 81-21:2014, Annex A, to minimise the risk of crushing, and
5. A copy of the Lift Specialist's Building Control (Amendment) Regulations<sup>3</sup> Ancillary Certificate of Compliance Design (7 Day Notice) for the lift design solution indicating compliance with the current Building Regulations and relevant Lift Standards  
(referencing derogation form clause 2.2 of Lifts Directive 2014/33/EU), and
6. A Health and Safety Compliance Declaration by the Project Supervisor / Building Designer for the Design Process.

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<sup>2</sup> Or the prEN 81 – 20 or prEN 81 - 21, whichever apply at the time.

<sup>3</sup> Published as SI No 9, 2014 and SI No 105, 2014 and complemented by the associated Code of Practice for Inspecting and Certifying Buildings and Works.