



**INSPECTION
OF LIFTS
REGULATIONS
(S.L. 427.63)**

**‘FITNESS-CHECK’
AND
PROPOSAL FOR
LEGISLATIVE
AMENDMENTS**



MCCAA

**MALTA COMPETITION AND
CONSUMER AFFAIRS AUTHORITY**

Background

Locally, the regulatory framework for lifts consists of two main pieces of legislation, namely, the Lifts Regulations (S.L. 427.37) and the Inspection of Lifts Regulations (S.L. 427.63).

The Lifts Regulations were introduced in 2002 by means of LN 370/2002 and applied lock-stock-and-barrel the provisions of the first Lifts Directive (Directive 95/16/EC). Hence, even before Malta's accession to the EU, a regulatory framework was already in place to ensure that lifts and their components are placed on the market and installed in accordance with the latest regulatory developments at EU level. In 2014, the Lifts Directive received an overhaul through Directive 2014/33/EU. This Directive was transposed locally in the Lifts Regulations, 2016 and regulates all aspects related to the placing on the market, installation and conformity assessment of lifts and their safety components.

The Inspection of Lifts Regulations were introduced in 2007 and represented Malta's endeavour to ensure that following their installation, lifts remain safe through preventive maintenance and periodic inspections carried out by Authorised Conformity Assessment Bodies ('ACABs'). The Inspection of Lifts Regulations also provide for the registration of lifts with the MCCAA and ensure that installed lifts are gradually modernised throughout their lifetime to improve their safety.

Whilst the Lifts Regulations received an overhaul through the transposition of the Lifts Directive (Recast) in 2016, the Inspection of Lifts Regulations remained unchanged since their introduction in 2007. To ensure that the legal framework remains effective in ensuring that lifts remain safe throughout their lifetime, the Inspection of Lifts Regulations underwent a 'fitness-check' which aimed at identifying rooms for improvement in terms of applicable safety standards, coherence with the Lifts Regulations and overall procedural efficacy. In line with the foregoing, the following legislative amendments are being proposed:

1. 'existing' and 'new' lifts

The current regulations create a dichotomy between existing and new lifts. 'Existing' lifts are defined as lifts installed and put into service prior the 1st of July 2002 and 'new' lifts are defined as those lifts that are installed and put into service after 1st July 2002. The date of 1st July 2002 corresponds to the date when the Lifts regulations, 2002 became applicable.

Lifts installed and put into service after 1st July 2002 were required to be compliant with the provisions of the Lifts Regulations, 2002 and were hence required to be duly assessed by a notified body and declared conformant with the regulations. On the

other hand, lifts installed and put into service before the entry into force of the Lifts Regulations, 2002 were not subject to such requirements. The Inspection of Lifts Regulations created a dichotomy to differentiate between these two categories of lifts. However, the term 'new' became misleading as 'new' lifts are now no longer 'new' as the nomenclature suggests, in the sense that a lift which was installed and put into service on 2nd July 2002 i.e some 18 years ago is also considered a 'new' lift under the current regulations.

In light of the foregoing, and for the sake of clarity, it is proposed that the dichotomy between 'existing' and 'new' lifts should be abolished and where the law makes reference to lifts which were not installed and put into service in accordance with the Lifts Regulations, i.e. pre-2002 lifts, it should explicitly refer to such lifts as lifts installed and put into service before 1st July 2002.

2. Scope and applicability

The current Inspection of Lifts Regulations applies to all lifts, whether existing or new that are installed in a condominium, domestic residence or workplace. In the current regulations, 'lift' is defined as a "lifting appliance serving specific levels, having a carrier moving along guides which are rigid and inclined at an angle of more than 15 degrees to the horizontal, intended for the transport of: persons, persons and goods or goods alone if the carrier is accessible, that is to say a person may enter it without difficulty, and fitted with controls situated inside the carrier or within reach of a person inside the carrier."

This definition is the same as the one provided in the Lifts Regulations, with the exception that the definition of 'lift' in the Lifts Regulations is further qualified by a series of exclusions. For example, a lift which has an accessible carrier, but which does not have a speed greater than 0.15m/s is excluded from the scope of the Lifts Regulation. To maintain consistency with the Lifts Regulations, it is being proposed that the scope of the Inspection of Lifts Regulations be clarified and brought in line with that of the Lifts Regulations.

The Lifts Regulations also exclude from their scope lifting appliances fitted in means of transport. On the other hand, the Inspection of Lifts Regulations provide for no such exclusion, rather it provides that 'workplace' shall include vehicles or vessels. In this regard, the proposed amendments exclude from the scope of these regulations lifts installed in vehicles, as these are specifically excluded from the scope of the Lifts Regulations and are specifically regulated by means of special legislation on vessels/vehicles.

3. Definitions

To ensure coherence with the Lifts Regulations, it is also proposed that definitions in the Inspection of Lifts Regulations are assigned the same meaning as those in the Lifts Regulations. The proposed amendments also propose a deletion of certain definitions which are no longer relevant such as the definition of the ‘Malta Standards Authority’, ‘new lift’, ‘existing lift’ and ‘important modification’ whilst introducing new definitions such as for ‘maintenance contractor’, ‘serious defect’, ‘notified body’, ‘regularisation certificate’ and ‘decommissioning of a lift’. The definitions of preventive inspection and thorough examination are also being amended to better reflect and differentiate between their relative scope.

4. Dual-purpose premises

The existing regulations do not cater for instances where premises such as condominium comprise both units used as a workplace and units used for domestic residence. Given that lifts installed in such premises are usually used more often, it is being proposed that such premises shall for all intents and purposes of this regulation be considered as a workplace. In this regard, the thorough examination of a lift installed in such dual-purpose premises shall be due every 5 years rather than every 10 years.

5. Important modifications

The current regulations introduced the concept of ‘important modification’, defined in the regulations as ‘an alteration to the lift which is liable to jeopardise its safety’ and enlists such alterations which are deemed ‘important’. As per the current regulations, following any of these alterations, the lift should undergo a thorough examination.

On the other hand, the Commission’s “Guide to Application of the Lifts Directive” (“the Guide”) refers to “major modifications” and provides for certain modifications which render the lift to be considered as a ‘new product’ and which therefore require that the lift be re-assessed through a conformity assessment carried out by a notified body. To ensure coherence with the Guide, it is being proposed that two categories of ‘modifications’ are established. The first category of modifications consists of alterations to the lift which are liable to jeopardise safety, but which do not render the lift to be considered as a ‘new product’. These modifications require a thorough examination by an ACAB.

The second category consists of those modifications which are liable to jeopardise safety, and which render the lift to be considered as a ‘new product’ in line with the “Guide to Application of the Lifts Directive”. These modifications will require a conformity assessment by a notified body as though such lift is being put into service for the first time. Such modifications shall consist of the following:

- a) a change in number of floors served by the lift;

- b) a change in number of openings;
- c) relocation of the lift;
- d) a change in travel;
- e) a change in rated speed;
- f) a change of the rated load; and
- g) a change of the mass of the car.

6. Notification

i) Scope

The current regulations provide that all installed lifts shall be ‘registered’ with the Malta Competition and Consumer Affairs Authority (“the Authority”). However, a lift is not deemed safe merely because it has been ‘registered’ with the Authority. Indeed, a lift is deemed safe when it is declared as conforming to the relevant safety requirement by the installer following a conformity assessment by a notified body. The scope of such ‘registration’ is merely to notify the Authority that a lift has been installed. Such information can then be used by the Authority in its market surveillance activities. In this regard, it is proposed that the term ‘registration’ is substituted by the term ‘notification’.

ii) Time-period within which lifts shall be notified

The current regulations provide that all installed lifts shall be ‘registered’ with the Authority yet fail to indicate the time-period within which such lifts shall be so registered. In this regard, the proposed amendments will provide that lifts shall be notified after installation but before they are put into service, i.e. switched on or made available to users.

iii) Delivery of a lift

Delivery is an important legal concept in contracts of sale and general consumer law. Both the warranty against lack of conformity in consumer law and the warranty of latent defects in civil law are triggered upon delivery. However, the exact moment when a lift is deemed to be delivered is unclear. It is therefore being proposed that for all intents and purposes, a lift is deemed to be delivered as soon as it is notified and put into service.

iv) Notification form

Information gathered from the notification process and other sources is an invaluable tool for market surveillance in that it allows the Authority to adopt a risk-based approach for the detection of potentially unsafe lifts. To ensure that all relevant data is gathered through the notification process, it is proposed that the following additional details/documents should be provided for the notification of a lift with the Authority:

a) *Installer acting on behalf of legal person*

It is being proposed that when the installer is acting on behalf of a legal person, the contact details, address of the registered office and company registration number shall be included.

b) *Declaration of Conformity and Conformity Assessment Certificate*

In case of lifts installed and put into service after 1st July 2002, it is proposed that the installer provides the declaration of conformity and conformity assessment certificate/s of the notified body/ies thereby verifying that the lift was installed in accordance with the essential safety requirements provided for in the Lifts Regulations.

c) *Declaration of the “responsible person” taking on responsibility for the lift*

The installer is responsible for the installation and putting into service of the lift. However, once the installation is completed, the ‘responsible person’ becomes responsible for the maintenance and upkeep of the lift. It is hence being proposed that the installer obtains a declaration from the ‘responsible person’ who will be responsible for the lift once this is put into service. This represents the transfer of the respective responsibilities from the installer onto the responsible person.

v) *Decommissioning of a Lift*

The responsibilities and obligations on the lift are only extinguished when the lift is decommissioned. Currently, the Authority is not informed when a lift is decommissioned, i.e. no longer in use and such lift remains registered in the Authority’s database. In this regard, it is proposed that in the event that a lift which was previously notified or registered is being decommissioned, the responsible person shall notify the Authority or both the Authority and OHSA, as the case may be, in writing, within 10 working days from when the lift was decommissioned and provide relevant proof thereof.

vi) *Notification of a lift by responsible person*

The current regulations provide that ‘new lifts’ i.e lift installed and put into service after 1st July 2002 shall be registered by the installer, whilst ‘existing lifts’ i.e lifts installed and put into service before 1st July 2002 shall be registered by the responsible person. This means that the responsible person cannot register a lift which has been installed and put into service after 1st July 2002. The problem with this is that the installer may have ceased its operation, ceased to legally exist or is untraceable (in case the installer is a legal person) and the lift will not be able to be registered. It is therefore being proposed that the

responsible person should be allowed to notify the lift himself if the installer has ceased to legally exist, ceased operation or is untraceable.

7. Thorough Examination

i) Scope

During the review process, it became clear that the demarcation line between thorough examination, preventive inspection and modernisation is somehow blurred. It is therefore being proposed that the scope of the thorough examination be clarified. To this end, the proposed draft specifies that the thorough examination is a systematic and detailed examination conducted by an ACAB to identify and determine:

- a) all the defects of the lift, which are or could become a danger to persons;
- b) the works required to remedy the defects identified;
- c) in case of defects other than serious defects, the time-limit within which the works to remedy such defects should be carried out; and
- d) whether the lift should be upgraded through modernisation works in accordance with Schedule I and the time-limit within which such modernisation should be carried out.

ii) Periodicity of examinations

The current regulations provide that the lifts installed in a workplace shall be thoroughly examined within 6 years. On the advice of the OHSA, it is being proposed that this period be reduced by one year to 5 years. This reduced period shall however only start to apply from the next thorough examination. Lifts installed in a domestic residence shall continue to be examined every 10 years.

iii) Simplification of Procedure

In the current regulations, the procedure for through examination is not contained in one provision but scattered throughout the regulations. The current regulations provide that the responsible person shall submit a lift for thorough examination within 6 months from the expiry of the date on which the thorough examination becomes due. The ACAB then decides whether there is a defect giving rise to an imminent risk of injury. Where the ACAB identifies such risk, he shall forbid the use of the lift and the responsible person must inform the Authorities within 2 working days. Following every thorough examination, the ACAB issues a report to the responsible person. Such report shall then be sent by the responsible person himself to the Authorities within either 15 days or 28 days depending on whether an imminent risk was identified.

Some substantial amendments are being proposed to simplify, consolidate and clarify the procedure for through examinations:

- a) Primarily, it is being proposed that the procedure be consolidated under one provision and that the provisions on modernisation are amalgamated with those on thorough examination given that the risk-assessment in terms of the modernisation to be carried out is conducted during the same examination. In other words, during the thorough examination, the ACAB is expected to both identify risks as well as assess through a risk-assessment whether the lift should be modernised to improve its safety.
- b) It is also being proposed that the further 6 months allowed for a lift to be submitted to thorough examination be deleted, given that periods between examinations are already sufficiently long.
- c) Given that the Authorities (MCCAA and OHSa) should only be alerted if a lift is found to be unsafe, it is being proposed that only thorough examination reports identifying a serious risk should be sent to the Authorities. These should be sent to the Authorities within 5 working days, rather than 15 working days, provided that Authorities should be informed immediately and not within 2 working days as in the current regulations, that the use of a lift has been forbidden by the ACAB.
- d) In order to further simplify the procedure, it is being proposed that the thorough examination reports are sent to the Authorities directly by the ACAB, rather than by the responsible person.

iv) Modernisation

Modernisation is the process by which a lift which is already in service is gradually improved to meet latest safety standards. This requires a risk assessment by the ACAB which ought to be conducted during the thorough examination. In so far as modernisation is concerned, the current regulations refer to standard EN81-80:2003. This standard has now been superseded by EN81-80:2019 and hence it is being proposed that the standard for modernisation against which the risk assessment is made should be the updated one. In deciding on the time-limit within which upgrades should be made, the ACAB should, apart from conducting a risk assessment in line with EN81-80:2019, also take into account: whether the lift has been regularly maintained; whether the lift is due to be replaced; the historical value (if any) of the lift; and the nature and primary use of the building in which it is installed.

v) Regularisation Certificate

In the current regulations, regularisation certificates refer to those certificates which are issued by an ACAB only following modernisation works. In this regard, the current regulations do not cater for certificate issued to certify works carried out to address defects identified during the thorough examination. It is therefore being proposed that on completion of modernisation works or other works to remedy defects identified during the thorough examination, the responsible person is to notify the ACAB that such works have been completed. The ACAB then conducts an inspection and issues a regularisation certificate to the responsible person. In case of works to address serious defects, the regularisation certificate is to be forwarded by the ACAB to the Authorities within 5 working days.

8. Preventive Maintenance

In the current regulations, "preventive maintenance" is defined as all regular operations necessary to maintain a good working order, ensure safety, as well as anticipate and avoid predictable faults in the lift and its components. On the other hand, the regulations do not contain any rules on "preventive maintenance" and is only mentioned in the context of records which are to be kept by the responsible person. In this regard, it is being proposed that this important concept be elaborated in line with the following new obligations:

- i) 'Responsible person' responsible for preventive maintenance

The draft regulations clarify that it is the responsible person who shall be responsible for the 'preventive maintenance' of the lift.

- ii) Obligation on maintenance contractors

The draft regulations introduce a definition of 'maintenance contractor' and provide that maintenance contractors shall ensure that any maintenance works or repairs on the lift are carried out by a 'technically competent person'

- iii) "Technically Competent Person"

During discussions with Authorised Conformity Assessment Bodies, it became apparent that it is not sufficient that contractors engaged to carry out maintenance works or repairs are competent to work on lifts, but such contractor shall be able to demonstrate that he is competent to work on the particular brand or type of lift. In this respect, it is being proposed that technically competent person is defined as "a person with recognised competence to carry out works on the particular brand or type of lift or component". Instead of specifying the qualifications or experience required for such person to be

considered “competent”, the regulations place the burden of proof on such person to prove that he is “competent” to work on such brand or type of lift or component. Such proof may be theoretical or experience-based or a combination of both.

iv) Maintenance or repair of non-compliant lifts

From the information gathered through the Authority’s market surveillance activities, it transpires that lifts which are non-compliant with the Lift Regulations are still being maintained and inspected as if they are compliant. In this regard, it is being proposed that a new obligation is introduced on both ACABs and maintenance contractors to refrain from carrying out maintenance works or inspect a lift, if it becomes apparent that such lift has no declaration of conformity. Such lifts can be potentially unsafe and should be reported immediately to the Authority. This also gives the Authority another opportunity to detect lifts which are non-compliant.

v) ACAB’s safety during inspections and thorough examinations

In order to ensure the safety of ACABs conducting inspections, it is also being proposed that during thorough examinations and preventive inspections, ACABs are to be accompanied and assisted by a ‘technically competent person’. An ACAB may also refuse to conduct an inspection if it deems that such person engaged to assist him lacks the necessary competence.

vi) Technically competent person to sign off works carried out

It is also being proposed that for traceability and accountability purposes, the technically competent person engaged to carry out works on a lift shall issue a signed list of works carried out to the responsible person.

vii) European Standard for preventive maintenance

The current regulations contain a list of standards in Schedule V, without however making any direct reference to such standards in the regulations itself. One of the standards mentioned in such schedule is ‘EN 13015:2001 - Maintenance for lifts and escalators - Rules for maintenance instructions’. The scope of such standard is to specify the elements necessary for the preparation of the instructions by the installer or manufacturer for the maintenance operations. In this regard, rather than referring to the standard itself, it is being proposed that maintenance contractor shall, in carrying out preventive maintenance on a lift, follow the instructions for maintenance provided by the Installer in accordance with point 6 of Schedule I of the Lifts Regulations.

9. Preventive Inspection

i) Scope

In order to clarify the scope of the preventive inspection, the proposed draft specifies that the preventive inspection is a visual and physical inspection which may if necessary be supplemented by a functional check which is conducted by an ACAB to:

- a) examine the mandatory markings and documentation;
- b) identify whether the preceding preventive inspection and thorough examination has been duly carried out;
- c) inspect the proper functioning of the safety features of the lift;
- d) detect any defects, in particular those that develop during the use or misuse of the lift which are or could become a danger to persons;
- e) identify the repair, renewal or alteration required to remedy the defects identified;
- f) establish a time-limit within which repair, renewal or alteration should be carried out; and
- g) verify that defects outlined in previous thorough examination reports and preventive inspection report have been remedied within the time-limits indicated therein.

ii) Periodicity of Inspections

The current regulations provide that the lifts installed in a workplace shall be inspected every 6 months. On the advice of the OHSA, it is being proposed that this be extended to one year. This extended period shall however only start to apply from the next preventive inspection. Lifts installed in a domestic residence shall continue to be inspected every year.

iii) Simplification of Procedure

In order to simplify the procedure for preventive inspections and to ensure coherence with the procedure for thorough examination, it is being proposed that similar procedures are established for both preventive inspections and thorough examinations.

iv) Minimal checks during a preventive inspection

The current regulations prescribe a list of checks which the preventive inspection should include. Often, ACABs rely heavily on this non-exhaustive list of checks and fail to conduct further checks to detect other defects that may have developed during the use or misuse of the lift. In this regard, it is being proposed that the list of checks be deleted from the law in favour of a general obligation imposed on the ACABs to carry out whatever checks they deem necessary to ensure the proper functioning of the safety features of the lift; detect any defects that develop during the use or misuse of the lift and identify the repair, renewal or alteration required to remedy the defects identified.

10. Enforcement – Lifts installed in a workplace

Under the current regulations, it is only the Director General (Technical Regulations) who has the power to enforce the regulations. This also applies to offences related to lifts installed in a workplace which are within the purview of the OHSA. It is hence being proposed that OHSA be the enforcing authority for the provisions relating to lifts installed in a workplace to which the regulations apply.

11. Transitory Provisions

a) Registration/Notification of lifts installed prior to the entry into force of the proposed amendments

It is being proposed that the notification of lifts which have been installed prior to the entry into force of the proposed amendments but which are being notified following the entry into force of the proposed amendments shall be made in accordance with the provisions of the law as amended. Therefore, if an installer has not yet registered the lift at the time when the amendments enter into force, the lift will need to be notified in accordance with the amended requirements including the new notification fee.

b) Thorough examinations and preventive inspections of lifts installed prior to the entry into force of the proposed amendments

It is also being proposed that the thorough examinations and preventive inspections of lifts installed prior to the entry into force of the proposed amendments but which are due to be inspected/examined following the entry into force of the proposed amendments shall be inspected/examined in accordance with the provisions of the law as amended. Therefore, a lift which is due for thorough examination after the entry into force of the proposed amendments would need to be assessed in accordance with the updated standard for modernisation. However, in order not to disrupt the periods which are already

running, it is being proposed that the new amended periods i.e 12 months (instead of 6 months) for preventive inspection of lifts installed in a workplace and 5 years (instead of 6 years) for thorough examination of lifts installed in a workplace, will only start running from the next through or preventive inspection onwards.

12. Prescribed forms

The current regulations prescribe the forms which an ACAB must use for the thorough examination and preventive inspection reports. In this respect, it is being proposed that the law should prescribe the details which should be included in its report rather than specifying the format to be used. Moreover, the forms prescribed in the law do not capture all the necessary details of the inspection/examination and its findings. In this regard, the proposed amendments prescribe an elaborated list of details which should be included in the reports.

13. Regularisation of Non-CE Marked Lifts Regulations

The rationale of this legislation was to regularise lifts put into service from 1st July 2002, which were, in anyway, not in compliance with the Lifts Regulations, 2002. Such lifts had to be regularised by 31st October 2011. Given that this legislation only applied till 31st October 2011, it is proposed that such legislation be repealed.

14. Fees for notification

The fee for registering a lift with the Authority is not established at law. It is therefore being proposed that the fee be officially established by incorporating a schedule of fees in the law itself. Such fee is established on a cost-recovery basis and shall be of one hundred and fifty (€150) Euros representing the administrative costs involved to vet the documents and for the upkeep of the lift register.
