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Target Audience:
All HSE Inspectors
Specialist Group Inspectors

FOD KNO 2000/01 FAIRGROUNDS OBJECTIVE -ENFORCEMENT OF KEY FACTORS

This SIM provides background advice on enforcement using EMM in relation to the key factors covered by KNO applying to fairgrounds.

BACKGROUND

1 This SIM supplements the Sector Strategic Plan (SSP) by giving information on how to enforce the key factors that inspectors are being asked to comment upon, if the need should arise. Information on how to assess compliance with the key factors and the way in which this information should be recorded on FOCUS, so that progress can be monitored, is explained in the SSP. There will be no need for further reporting back to the Entertainment Section.

2 The current objective forms part of an extended 5 year compliance programme. This year will be the last year during which period inspectors will be asked to press for compliance with the law as explained in the fairgrounds guidance HSG175. During this time inspectors will be asked to take enforcement action if compliance falls below the expected level.

3 The purpose of this minute is to assist inspectors in their enforcement action. The EMM style guidance ([para 17 onwards](#)) reflect the Sector's views only for this calibration year.

KEY FACTORS

4 The Sector Strategic Plan objective is directed at improving compliance on 4 main issues:

- (1) buying and selling of fairground equipment
- (2) annual inspection (thorough examination)
- (3) contents of the operations manual
- (4) supervision.

5 The following dutyholders may be involved in:

(1) Buying and selling:

(a) manufacturers, suppliers (and ride controllers if they have directly imported or built their own equipment) to carry out design review, assessment of conformity to design and either co-operate with the installers or arrange for initial test before first use.

(b) purchasers buying rides to ensure that suppliers are meeting the above.

(c) ride owners selling rides to supply them with a complete operations manual containing all the above reports.

(2) Annual inspection (thorough examination):

(a) ride controllers, to ensure that they are having annual inspections (thorough examination) done by registered inspection bodies, see details of the Amusement Devices Inspection Procedures Scheme in [SIM 5/2000/08](#).

(b) registered inspection bodies, to ensure that they are carrying out their duties as required by section D of HSG175 competently, that is, to confirm whether the ride has deteriorated to such an extent that an inspection body is unable to issue a report that it is fit for continued use, and, to ensure that the device is upgraded where necessary to recent or existing technical guidance.

(c) ride controllers, to ensure that they maintain their rides properly between thorough examinations and update them with new safety measures as necessary as determined by experience or as advised by an inspection body or others.

(3) Completion of the operations manual:

(a) ride controller, that an operations manual exists in which there are reports of design review, assessment of conformity to design and initial test and subsequent thorough examinations plus details of repairs and modifications giving the complete history of the ride. If reports of design review and assessment of conformity to design are not shown in the operations manual, see below.

(b) ride controller/registered inspection body, to ensure that for older devices, where some reports may not be available, risk assessment by the Controller aided by the advice of an inspection body determines whether design review is necessary by virtue of the fact that the maturity of the equipment has confirmed that pre-use inspections are not required, or, that only limited inspection is required.

(4) Supervision:

(a) ride controller, to ensure that operators and attendants are trained in accordance with paragraphs 237-244 of HSG175. BALPPA use NVQs whilst the Guild has its own training schedule.

ASSESSING AND RECORDING COMPLIANCE

6 Inspectors are asked to use the FOCUS drop down screen for the Food & Entertainment Sector and record their contact report accordingly under the 'Fairgrounds' keyword.

7 Inspectors should report positively on the extent each of the key factors relevant to that dutyholder are met for the 4 main issues. The words to describe the state of compliance after the intervention are: No (ie 0-30%); Part (ie 30%-60%); Most (ie 60%-90%) and Full (ie 90%-100%) compliance. A useful contact report might contain the required compliance information as:

B/S no, TE [or AI] part, OM most, Sup full.

8 SIM 5/1999/12, gives guidance on recording details on FOCUS visits for each ride controller as a separate client. The recording of compliance for the 4 main issues can be for each occasion that this controller is encountered at a new site and may include a number of rides.

Other types of fairground equipment

9 Go-karts and bouncy castles are fairground equipment by definition but if situated at sites which are not otherwise fairgrounds or amusement parks they will be inspected by LA inspectors. HELA has agreed LAs will pursue this as a common objective for such equipment, together with coin-operated children's rides transferred to LA enforcement and arcades.

10 Tethered passenger balloons should be treated as fairground equipment. Controllers, operators and manufacturers are aware that HSG175 will apply. A number of balloons are now operating in the country.

11 Other ride-on attractions such as all-terrain vehicles and miniature railways fall within the definition of fairground equipment and hence to HSE enforcement. HSG175 should be applied for commercial operation but it is not entirely appropriate when dealing with private clubs or model engineering societies in the case of miniature railways. Further guidance on miniature railways is about to be published in Entertainment Sheet No12.

BENCHMARKS

12 The industry has agreed the system of steps and checks for the safety of attractions given in Table 1 of the guidance HSG175. They are agreed that these steps are a reasonable practicable way of meeting legal duties. Failure to follow the steps and checks can therefore be referred to as evidence that all reasonably practicable measures were not taken to meet sections 3 & 4 duties of care to the public if required.

13 PUWER 98 gives statutory backing to the inspections required at installation and thereafter at regular intervals (annual inspection). Fairground equipment meeting the requirements of the ADIPS inspection scheme will satisfy the requirements of PUWER.

14 The following table lists relevant legislation against the 4 key factors being considered in the compliance programme.

| | Persons likely to be affected |
|--|-------------------------------|
| | |

| Key factor | Employees | Members of the public |
|---|----------------------------------|----------------------------------|
| Buying or selling | HSW Act s.6(1) | HSW Act s.6(1A) |
| Annual inspection (thorough examination) | PUWER 98 reg.6 & HSW Act 2(1) | PUWER 98 reg.6 & HSW Acts3/s4 |
| Completion of the operations manual | HSW Act s.2(1) s.6(1A) | HSW Act s.3 s.6(1A) |
| Supervision | HSW Act s.2(1) | HSW Act s.3 |

15 Fairground equipment is now within the definition of work equipment. There is some discussion whether the general public are covered by the requirements of PUWER but HSE solicitor's opinion is that reg.6 is not limited to only offer protection to workers even if the ACoP has unfortunately mentioned only workers.

16 An operational policy decision has been agreed with FOD SU & SPD not to apply the Lifting Operations and Lifting Equipment Regulations 1998 to fairground equipment where any lifting is incidental to the enjoyment of the ride. If, however, a conventional piece of lifting equipment is included in a ride to provide access, such as a passenger lift up a tower, then that item should be treated as lifting equipment and the regulations applied.

APPLICATION OF EMM & EXAMPLES OF NOTICE WORDING

17 The following examples are given for the 4 key factors. The Entertainment Section would welcome feedback from inspectors on practical experience of wording enforcement notices etc:

Buying and selling

Example: A Cyclone Twist ride has recently been acquired by a controller. After being bought, the ride was inspected by a registered inspection body who signed an initial test report. On investigation there is no proof that pre-use inspections of design review and assessment of conformity to design had ever been completed.

HSG175 recommends that at the point of buying a ride the controller needs to ensure that all the reports of pre-use inspections are in place so that the inspection body carrying out the first initial test inspection can complete a report.

| | |
|---|--|
| Inputs | New Cyclone Twist bought without proof of pre-use inspections of design review and assessment of conformity to design. |
| Gap analysis [Actual risk compared to benchmark] | Actual risk: Likelihood - probable cause of injury Consequence - serious personal injury Extent - multiple injuries |
| Benchmark: | Significant personal injury - remote |
| Risk gap (multiple casualties) | Extreme |
| Standard | Defined |
| Time horizon | Immediate |
| National Enforcement Expectation | Prohibition notice and consider prosecution |

Local Factors

Previous enforcement action and standard of compliance in general could influence prosecution

Risk to employees - Section 6(1) Health and Safety at Work etc Act 1974

----- that you (the manufacturer, importer, or supplier) have not provided a report of design review or assessment of conformity to design for an article of fairground equipment namely a Cylcone Twist model No. xxxx to ensure, so far as is reasonably practicable, that it is designed and constructed so 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.

Schedule to refer to pre-use inspections including design review, assessment of conformity to design and initial test being carried out by a registered inspection body or equally competent body, according to recommendations contained in HSG175 and ADIPS. Inspectors should avoid being specific in the way that the design review should be carried out because they are not qualified to make recommendations in this respect, but they should identify the areas which need attention.

Risk to public - Section 6(1A) Health and Safety at Work etc Act 1974

----- that you (the manufacturer, importer, or supplier) have not provided a report of design review or assessment of conformity to design for an article of fairground equipment namely a Cylcone Twist model No. xxxx to ensure, so far as is reasonably practicable, that it is designed and constructed so that it will be safe and without risks to health at all times when used for or in connection with the entertainment of members of the public.

Schedule.....as above.

In the above example the inspection body is not entirely blameless for carrying out an initial test without seeing proof of the design review inspection report and the assessment of conformity to design inspection report. EMM is applied to this example in the following way:

| | |
|----------------------------------|--|
| Inputs | Cyclone Twist initial test inspection completed by inspection body without proof of other pre-use inspections. |
| Compliance (Administrative) | Absent |
| Standard | Interpretative [HSG175 & ADIPS Info Sheet] |
| National Enforcement Expectation | Letter |
| Local Factors | Serious breach of industry agreed inspection procedures worthy of a complaint to the ADIPS scheme administrators. Consider notice action or prosecution on basis of previous enforcement action. |

New or second hand rides, built or supplied before October 1997, require to be inspected when they change hands. A similar failure not noticed at this inspection in order to complete a declaration of operational compliance (DOC) would result in the same outcome as above.

Annual inspection

Example: A Cyclone Twist ride is found without a valid inspection report showing that it has inspected. The consequence of ride failure might be serious personal injury to members of the public and employees alike.

| | |
|---|--|
| Inputs | Cyclone Twist found without proof that it has been subjected to annual inspection. |
| Gap analysis [Actual risk compared to benchmark] | Actual risk: Likelihood - probable cause of injury Consequence - serious personal injury Extent - multiple injuries |
| Benchmark: | Significant personal injury - remote |
| Risk gap (multiple casualties) | Extreme |
| Standard | Established |
| Time horizon | Immediate |
| National Enforcement Expectation | Prohibition notice and consider prosecution |
| Local Factors | Vulnerable group consists of the general public. Previous enforcement action and standard of compliance in general could influence prosecution |

Example: A hoopla stall is found without proof of annual inspection. Such a stall might not be capable of causing serious personal injury or multiple injury. Applying EMM would give the following result:

| | |
|---|--|
| Inputs | Hoopla stall found without proof that it has been subjected to annual inspection. |
| Gap analysis [Actual risk compared to benchmark] | Actual risk: Likelihood - remote cause of injury Consequence - minor personal injury Extent - minor injuries |
| Benchmark: | Minor personal injury - remote |
| Risk gap (single casualty) | Nominal |
| Standard | Established |
| Time horizon | Impending |
| National Enforcement Expectation | Letter/Advice |
| Local Factors | Vulnerable group consists of the general public. Previous enforcement action and standard of compliance in general would influence any notice action |

Risk to employees or the public - Reg 6(2) Provision and Use of Work Equipment Regulations 1998

----- that you, an employer within the meaning of the regulations, have failed to carry out

annual inspection (thorough examination) to ensure that work equipment namely the Cyclone Twist fairground ride No. xxxx has been inspected at suitable intervals to ensure that health and safety conditions are maintained, any upgrade necessary has been carried out, and that any deterioration can be detected and remedied in good time.

or **risk to employees** - section 2(1) Health and Safety at Work etc Act 1974

----- that you have failed to carry out annual inspection (thorough examination) for any deterioration to be detected and remedied in good time to ensure, so far as is reasonably practicable, that a place of work on the Cyclone twist fairground ride No. xxxx under your control is maintained in a condition which is safe and without risks to health and that access and egress to the place of work is safe and without such risks.

or **risk to public** - section 3 Health and Safety at Work etc Act 1974

----- that you have failed to carry out annual inspection of the Cyclone twist fairground ride No. xxxx under your control for any deterioration to be detected and remedied in good time to ensure, so far as is reasonably practicable, that persons not in your employment are not affected thereby and are not exposed to risks to their health and safety.

or **risk to public** - section 4 Health and Safety at Work etc Act 1974

----- that you having control of non-domestic premises have failed to carry out annual inspection of the Cyclone twist fairground ride No. xxxx used by other persons, not being your employees, for any deterioration to be detected and remedied in good time to ensure, so far as is reasonably practicable, that said plant is safe and without risk to health.

Completion of the operations manual

Example: A Cyclone Twist ride is found with minimal paperwork covering what is now required to be kept in the operations manual. Although a valid declaration of operational compliance (DOC) has been produced by a registered inspection body there is no documentation which can be produced which shows what has been covered by the design review inspection or the assessment of conformity to design. [In this first example we will assume that the registered inspection body has acted properly and has actually done the job required to be done to the limit of their professional ability.]

| | |
|----------------------------------|--|
| Inputs | Cyclone Twist operations manual inadequate but annual inspection properly done by registered inspection body. Administrative fault by owner or Controller of the ride. |
| Compliance (Administrative) | Absent |
| Standard | Interpretative [HSG175] |
| National Enforcement Expectation | Notice |
| Local Factors | Serious breach of industry agreed guidance HSG175. Consider improvement notice on basis of previous enforcement history and general standard of compliance. |

If the Operations Manual shows that annual inspection and pre-use inspection have not been carried out proceed as above under Buying and selling and Annual inspection.

Example: A Cyclone Twist ride Operations Manual does not contain details the safe operating conditions for the ride and does not give details of the recommended maintenance then a risk gap approach is more appropriate as follows:

| | |
|---|---|
| Inputs | Cyclone Twist Operations manual found without details of safe operation or maintenance. |
| Gap analysis [Actual risk compared to benchmark] | Actual risk: Likelihood - probable cause of injury Consequence - serious personal injury Extent - multiple injuries |
| Benchmark: | Significant personal injury - remote |
| Risk gap (multiple casualties) | Extreme |
| Standard | Established |
| Time horizon | Immediate |
| National Enforcement Expectation | Prohibition notice and consider prosecution |
| Local Factors | Vulnerable group consists of the general public. Previous enforcement action and standard of compliance in general could influence notice action or prosecution |

Risk to employees - section 2(1) Health and Safety at Work etc Act 1974

----- that you have failed to provide adequate information in the operations manual of the Cyclone Twist fairground ride No. xxxx as is necessary to ensure, so far as is reasonably practicable, the health and safety of your employees.

Risk to public - section 3 Health and Safety at Work etc Act 1974

----- that you have failed to provide adequate information in the operations manual of the Cyclone Twist fairground ride No. xxxx as is necessary to ensure, so far as is reasonably practicable, that persons not in your employment are not affected thereby and are not exposed to risks to their health and safety.

Example: In the above example if it can be shown that the fault lies with the manufacturer, importer or supplier then EMM suggests following an administrative arrangements approach:

| | |
|----------------------------------|---|
| Inputs | Cyclone Twist ride provided without safe operating procedures. |
| Compliance (Administrative) | Absent |
| Standard | Defined [HSW Section 6] |
| National Enforcement Expectation | Improvement notice |
| Local Factors | Vulnerable group consists of members of the public. Consider prosecution on basis of enforcement record and general standard of compliance. |

Risk to employees and general public arising from designer's, manufacturer's, importer's or supplier's responsibility - Section 6(1A) Health and Safety at Work etc Act 1974

----- that you (the designer or manufacturer or importer or supplier) have failed to provide adequate information about the use of the Cyclone Twist fairground ride No. xxxx for the purpose for which it was designed or tested and about any conditions necessary to ensure that it will be safe and without risk to health at all times when it is being used for or in connection with the entertainment of members of the public.

Supervision

Example: A Cylcone Twist is found operated by one untrained attendant when it obviously needs more supervision.

| | |
|---|--|
| Inputs | Cyclone Twist found in operation without adequate supervision. |
| Gap analysis [Actual risk compared to benchmark] | Actual risk: Likelihood - probable cause of injury Consequence - serious personal injury Extent - multiple injuries |
| Benchmark: | Significant personal injury - remote |
| Risk gap (multiple casualties) | Extreme |
| Standard | Established |
| Time horizon | Immediate |
| National Enforcement Expectation | Prohibition notice and consider prosecution |
| Local Factors | Vulnerable group consists of the general public. Previous enforcement action and standard of compliance in general could influence prosecution |

Risk to employees - section 2(1) Health and Safety at Work etc Act 1974

----- that you have failed to provide adequate supervision on the operation of the Cyclone Twist fairground ride No. xxxx as is necessary to ensure, so far as is reasonably practicable, the health and safety of your employees.

Risk to public - section 3 Health and Safety at Work etc Act 1974

----- that you have failed to provide adequate supervision for the operation of the Cyclone Twist fairground ride No. xxxx as is necessary to ensure, so far as is reasonably practicable, that persons not in your employment are not affected thereby and are not exposed to risks to their health and safety.

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