

ADVENTURE ACTIVITIES LICENSING AUTHORITY

The Approach to the Inspection of Providers within Scope of the Adventure Activities Licensing Scheme to Permit Issue of a Licence

Introduction

In accordance with the Activity Centres (Young Persons' Safety) Act 1995, the Health and Safety Executive (HSE) has been designated as the Adventure Activities Licensing Authority (AALA) since April 2007. AALA is responsible for the implementation and oversight of the licensing regime for the provision of adventure activities for young people within scope of the Adventure Activities Licensing Regulations 2004 (AALR).

This Statement explains how the approach to the inspection of providers by the Adventure Activities Licensing Service¹ (AALS) is compatible with the inspection approach adopted by the HSE in other permissioning regimes for which the HSE is responsible². It is important to recognise the need for clarity where there is a prior role of the regulator in the permitting of an activity. The regime is further explained in L77 – “Guidance from the Licensing Authority on the Adventure Activities Licensing Regulations 2004”, as is the key concept of the culture of safety overall.

Permissioning – A summary³

Permissioning regimes are an addition to the general framework of health and safety law. In this case, the regulator giving permission for licensable activities⁴ is AALA. Permissioning describes the regime where the start or continuation of particular activities is conditional upon a consent or licence etc. from the regulator. Parliament decided that, with limited exemptions, only those who hold a licence could provide specified adventure activities to young people under 18.

Permissioning of licensable activities is *not* intended to provide a guarantee of health and safety in the operation of the duty holder's arrangements. Even with a professional inspection strategy and regime, AALA cannot guarantee that there will be no major incidents. Responsibility for health and safety can *only* lie with the duty holder. However, the issuing of a licence indicates that AALS, on behalf of AALA, was satisfied that good safety management practice was in place at the date of issue and that AALS had a reasonable belief, based on the information to hand, that these good safety management practices would remain in place for the duration of the licence.

¹ HSE has contracted the private, not for profit company, that was formerly the AALA to deliver the regime on a day to day basis. This company and its activities are referred to as the Adventure Activities Licensing Service (AALS).

² Health and Safety Commission Policy Statement – Our approach to permissioning regimes, www.hse.gov.uk/enforce/permissioning.pdf

³ For full details of the HSE approach to permissioning regimes see - www.hse.gov.uk/enforce/permissioning.pdf

⁴ Licensable adventure activities are – trekking, climbing, caving and water sports, as defined in Appendix 1.

AALS Inspectors are highly qualified and experienced outdoor professionals but their role is not to audit every aspect of a provider's safety system or verify every piece of information supplied by the provider. It is a diagnostic sampling of the provider's safety management system with elements of detailed questioning about the management arrangements for the licensable activities. A professional judgement has to be made about the competence of the provider and their arrangements to comply with the law on the day of the inspection and how likely it is that compliance will continue throughout the licence period.

The licence is required for and explicitly applies only to licensable activities (see Appendix 1) and the places specified on it. Non-licensable activities are considered as part of the concept of "a culture of safety overall" but are not licensed.

The aim of the licensing regime

"The aim of the adventure activities licensing scheme is to give assurance that good safety management practice is being followed so that young people can continue to have the opportunity to experience exciting and stimulating activities outdoor while not being exposed to avoidable risks of death and disabling injury" (Guidance from the Adventure Activities Licensing Authority, page 1, paragraph 1 (L77))⁵. More detail on the aim of the regime, the activities covered and the safety standards to be achieved are set out in L77.

A fundamental part of the regime is the inspection of those providing defined adventure activities within scope of the regulations.

The regulatory context and guidance for AALS inspections

The general approach to licensing is set out in the Activity Centres (Young Persons') Safety Act 1995 and the Adventure Activities Licensing Regulations 2004. Further guidance on the regulations and expectations of providers and the AALS is given in L77.

Principles of inspection

AALS inspections will satisfy the following principles:

Proportionate - In a low risk, low accident-rate but potentially high consequence sector, inspections will be light-touch but suitably robust as has been the case since licensing was introduced. Lyme Bay was a prime example of a very infrequent event but one that caused multiple fatalities and much societal concern, hence the introduction of a licensing regime.

Targeted - This primarily means being risk-based, but includes the obvious expectation that inspectors should focus on those aspects of provision which have the higher hazards and risks. Licence duration is also risk-based being derived from the broad principles set out by AALA in L77 (paragraphs 70 - 73) and incorporated

⁵ L77 can be downloaded free at - <http://www.hse.gov.uk/pubns/books/l77.htm>

into the Criteria for the Duration of Licences Inspector's Guidance Note⁶. This latter document gives an initial indication of the expected duration of a licence for a provider and hence the frequency of full licence inspections. For example, it assumes that larger scale or more complex provision presents more risk than smaller or less complex, and so larger scale or more complex provision is inspected more frequently. Similarly a higher turnover of staff attracts a higher frequency of inspection than a more settled staff.

This is an evolutionary process and other parameters have been added over time. The duration of licence is independent of any spot check activity. The duration of a licence does not indicate that one provider is any more or any less safe than a provider who holds a different duration of licence. Spot checks, either targeted or randomly selected, either announced or un-announced, may be carried out on any provider at any time. Contact with licence holders may also be made as a result of a complaint made to AALS or as a result of a request by an enforcing authority or upon notification to AALS of a change in licensable provision, relevant safety practice or relevant staffing.

AALS regularly reviews accidents and incidents in the sector, both in and out of scope of licensing as well as those happening abroad to identify any lessons that may be learned, to assist the sector in its management of safety, to help target inspection activity, and to confirm that what is being targeted is correct.

Transparent - AALS inspectors speak to the providers face to face and a copy of the inspector's report is given to the provider.

ALA and AALS consider the National Governing Bodies as being the arbiters of good practice in their specific field and decisions continue to be mindful of this. Co-operative relationships are maintained with NGBs as well as other sector representative bodies. This approach is consistent with government views on sector based non-statutory safety management. Where there is no NGB for an activity, any relevant principles or practices from another NGB or other sector may be referred to. Appropriate co-operation may also take place with bodies that may be representative of an activity but are not recognised National Governing Bodies of sport.

Consistent - Consistency is maintained by:

- Maintaining written guidance for inspectors. This guidance is free to download from <http://webcommunities.hse.gov.uk/connect.ti/adventureactivitiesnetwork/view?objectId=205776&exp=e1>;
- Holding regular inspectors' meetings where practices and rationale are reviewed, agreed and revised;
- The Head of Inspection joins inspectors on routine inspections to retain an accurate picture of current issues at inspection and an overview of the totality of inspectors' approach to and requirements of providers;
- ALA carries out occasional joint visits with AALS inspectors for similar reasons;

⁶ ALA Inspector Guidance Note 1.3. Available at - <http://webcommunities.hse.gov.uk/connect.ti/adventureactivitiesnetwork/view?objectId=205840>

- Likewise AALS inspectors carry out occasional joint working with HSE and LA enforcement inspectors.

Accountable - AALS is accountable to the AALA Board, which is in turn accountable to HSE. The latter is in turn accountable to Ministers and Parliament. This is an evolution of the situation prior to April 2007.

Holistic (mindful of the bigger picture) - In reaching their decisions inspectors will be mindful of:

- Breaches of the AALR;
- Breaches of HSW and other relevant safety regulations;
- Any negative impact that control measures may inadvertently have on those who may be affected, directly or indirectly, by the measures. For example, measures to control a minor risk of harm may be targeted and proportionate when viewed in a narrow focus of accident prevention, but not appropriate holistically if it significantly reduces the opportunities for the individuals to develop a fit and healthy life style and an understanding of risk and consequence in a real life setting which helps equip them for adult life. In this context the requirements for health and safety may not be the same and may even be divergent.

Other factors influencing inspections

Whoever creates the risks must manage them

The legal duty to manage risks lies with those who create them. The key to receiving a licence will normally be a demonstration or description by the activity provider of how they (the duty holder) manage their risks. This requires duty holders to think through their actual operations, from beginning to end, identify the hazards, consider the risks and implement control measures or systems needed to comply with the requirements of the regime. This will generally be based on or consistent with NGB recommended practices.

Where there are complex management arrangements and several duty holders contribute to providing activities, there will be an expectation that the arrangements between the parties will be clear as to who is responsible for the management of what parts of the provision before, during and after the activity. The three phases of the inspection look at a sample of procedures, the supporting documentation which underpins them, and a practical assessment of their implementation.

However, a description or demonstration are of no use without the active commitment of the duty holder in putting into practice what has been set out and ensuring that it is maintained. Whilst such regimes inevitably involve at least some detailed documentation and process, excessive unnecessary bureaucracy should, and in general, can be avoided.

Review of Documentation and Arrangements

AALS inspectors will normally expect the duty holder's health and safety management arrangements to be set out in a way that shows how the duty holder is satisfied as to the safety of the proposed or actual operations. "Health and safety

management arrangements” is a generic term to encompass risk assessments, instructor qualifications, operating procedures, equipment management systems, activity planning matrices, emergency arrangements etc.

Inspectors will expect;

- Duty holders to have identified the significant hazards, including those arising from the locations used, assessed the risk, reviewed the extent to which safety is integral to the activity, developed effective control measures (for those hazards or residual risks which both the holistic principle and the principle of proportionality suggest need not be eliminated) and to have recorded these. The arrangements should be reviewed as required and be kept up to date;
- To see that the control measures set out cover systems and procedures, human organisational factors, and hardware as a collective whole; and include the duty holder’s plans for improvement where required;
- Duty holders to be able to show how they resource their health and safety management arrangements;
- Duty holders to show how they implement the control measures, review them regularly and keep them up to date;
- To see the arrangements for managing emergencies and mitigating their consequences and how these are tested.

Inspectors will recommend that a Licence be issued if, on balance, they are satisfied with the overall management of safety. Where minor, non-significant deficiencies are identified, the licensing process will not be delayed but requirements will be made for remedial action.

If the inspector judges the arrangements or supporting documentation to have significant deficiencies they may recommend that a licence should be refused until satisfactory remedial action has been taken, or, if already in existence, that the licence be revoked. In the case of revocation, AALA and the health and safety enforcing authority will be informed.

An important part of the work of AALS is to judge whether safety management measures, claimed by the provider and seen by the inspector in various documents, will be delivered in practice over the period covered by any licence issued.

Evidence of staff competence

The competence of staff is the biggest single factor affecting the safety of adventure activities. AALS inspectors will expect to see evidence of how an acceptable standard of staff competence is maintained in the following key aspects:

- **Selection** – criteria and process including any required experience or qualifications;
- **Induction** – no matter how well qualified a new member of staff is there will still be a requirement for induction into ways of working of their new employer. This includes how a session ought to be run but also should provide evidence that staff, especially newer or more junior staff, have been trained in the handling of the type of emergencies that might arise at particular venues specifically in the context of their current work;

- **Validation** – this is rapidly becoming a formal process based on qualifications and internal ‘statements of competence’, and will often include both technical skills and experience together with other aspects of general suitability;
- **Deployment** – ensuring that an appropriate leader is assigned to an appropriate group in an appropriate location;
- **Field Monitoring** – the observation of staff in their normal working environment. This is primarily to ensure that management are familiar with what is being delivered in their name. In industry it is often referred to as walking the floor. It may also be used as part of an appraisal or revalidation process;
- **Further Training** – The need for further training may be identified through the field monitoring above, or by a number of other mechanisms.

Other information or evidence

L77, paragraph 10 states that “the licensing authority may take account of any relevant evidence that may come to its attention in reaching its decision, including that from non-licensable activities”. Inherent within the AALR is the fact that licensable activities are considered to be among the most hazardous for young persons undertaking adventure activity.

In keeping with this inherent proportionality AALS only offers guidance on non-licensable activities. If the AALS is not satisfied that deficiencies in non-licensable activities have or will be satisfactorily addressed, any apparent breach of health and safety regulations or failure to follow good safety practice may be referred to the relevant enforcing authority or raised with the relevant NGB as appropriate, and may also be considered by AALS as a part of its decision making processes.

The approach to inspection and sampling of activities has evolved over the period since licensing was introduced. L77, paragraph 9 states that AALA (now including the AALS) will look for “an overall culture of safety”. This is routinely done by sampling both licensable and, where they exist, non-licensable activities.

Inspection Reports and Decisions following from them

Following an inspection, the inspector will prepare a report of their findings including a recommendation as to whether or not a licence should be issued and if so, its duration. The inspector will also include any requirements on the provider – things they need to do either before the next inspection or within a given time period, and the inspector may also include matters of advice to the provider – things that the provider may wish to consider doing but is not obliged to do.

The report is passed to the Head of Inspection, who will review the inspector’s recommendations as to the issue of the licence and the appropriateness of any requirements and advice. The recommendations contained in the inspectors’ reports will generally be endorsed unless they are clearly disproportionate or inconsistent with agreed principles.

The Head of Inspection will then write formally to the provider, informing them of the decision and recording in writing the requirements, if any, and the advice, if appropriate. A copy of the inspection report is given to the provider.

Representations against the Decisions of AALS

Should a provider be dissatisfied with the decision of AALS, or conditions attached to the licence, or feel that specific issues have been misrepresented in the inspector's report, they are asked to first make representation to Head of Inspection. This will generally result in further scrutiny of the issues under consideration. An explanation of the reasons for any refusal or conditions will be provided. Information on routes and procedures for making second stage representations to AALA about the decision will be given. In the event that a refusal of a licence application or the attachment of condition(s) is confirmed after representations to both AALS and AALA, the applicant has the right of appeal to the relevant national authority⁷. The appeal system is open and transparent with clearly laid out procedures and arrangements.

A similar system applies to any variation or revocation of a licence by AALS.

Summary

A licensing inspection will be automatically triggered by the application for the grant of or renewal of a licence. Additional inspections may occur as planned inspections to follow up on matters arising from the licensing inspection, as a spot check, or as a result of a complaint about a licensable matter.

Following an inspection, inspector will make a considered judgement based on their findings as to what they will recommend to the Head of Inspection. This will include a recommendation as to issuance of a licence, revocation or variation as well as referring to any remedial action needed. If the recommendation is for the issue of a licence, the inspector will make a recommendation as to the length of licence and any non-standard conditions to be attached to it.

The licence can be for any period up to three years but is normally of one, two or three year duration based on the inspector's report and the criteria for licence duration referred to above.

All licences are subject to the Standard Conditions and AALS may add special conditions where appropriate. This is consistent with the wider HSE approach, where after an inspection, a rating will be applied by the inspector, which will trigger a further inspection in due course – a higher rating equates to an inspection occurring sooner than a lower rating. Additional inspections may also result from planned inspections to follow up on matters arising from the original inspection, as a spot check or as a result of a complaint or accident.

The licence will show on its face the activities for which the provider is licensed.

Adventure Activities Licensing Authority, September 2015

⁷ The relevant national authority is for England and Scotland, the Secretary of State and for Wales is the National Assembly for Wales.

Appendix 1

Definitions of licensable adventure activities as set out in the Adventure Activities Licensing Regulations 2004

“caving” means the exploration of underground passages (other than those principally used as show-places open to the public) —

(a) in parts of mines which are no longer worked; or

(b) in natural caves where the exploration of those passages requires, in order to be carried out safely, the use of rock climbing or diving equipment or the application of special skills or techniques;

“climbing” means climbing, traversing, abseiling or scrambling over natural terrain or outdoor man-made structures (other than structures designed for such activities) which requires, in order to be carried out safely, the use of equipment for, or the application of special skills or techniques in, rock climbing or ice climbing;

“trekking” means journeying on foot, horse or pedal cycle or skiing over terrain—

(a) which is moorland or more than 600 metres above sea level; and

(b) from which it would take more than 30 minutes travelling time to reach any accessible road or refuge;

but does not include skiing on a prepared and marked-out ski-run which is patrolled by persons engaged to assist in cases of injury;

“watersports” means the use on specified waters of—

(a) canoes, kayaks or similar craft propelled or steered by paddles held in the hand (but excluding rowing-boats propelled or steered by oars);

(b) rafts (including those which are inflatable or which are improvised from various materials but excluding those propelled by means of a motor or towed by a motor-boat); or

(c) sailing boats, windsurfers, sailing dinghies or other craft whose principal means of propulsion is the wind but excluding craft the construction, equipment and use of which is subject to a requirement for a certificate issued pursuant to the Merchant Shipping Act 1995 or any regulation or order made thereunder;