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## HEALTH AND SAFETY COMMISSION

### HSE'S HAMPTON PROGRAMME – HSE'S NOMINATION AS THE ADVENTURE ACTIVITIES LICENSING AUTHORITY

A paper by Peter Sargent and Julia Soave

Lead Board Member: Jonathan Rees/Giles Denham

Cleared by Giles Denham on 21 April 2006

#### Issue

- 1 Nomination of HSE as the Adventure Activities Licensing Authority (AALA).

#### Timing

- 2 Routine.

#### Recommendation

- 3 That the Commission agree to nominate HSE as the AALA.

#### Background

4 The Hampton report, which was accepted by the Government, recommended that the AALA be absorbed into HSE. The Hampton Implementation Programme (HIP) Board agreed that this should be achieved by HSE becoming the AALA. Some background information on the AALA is given in **Annex 1**. The HSC recently considered a paper on HSE's Hampton programme, which included information on the AALA (HSC/06/21).

5 HSE, in consultation with the Department for Work and Pensions (DWP) and the Department for Education and Skills (DfES), has drawn up an implementation plan to merge the AALA into HSE. DWP and DfES managers have given their formal agreement. DfES has consulted the Scottish Executive who are content. The Welsh Assembly Government (WAG) has verbally agreed the plan. DfES has responsibility for the Act in England and Scotland, and the WAG has responsibility in Wales.

6 The plan requires DfES sponsorship of the AALA to transfer to DWP and for HSE to become the AALA in place of Tourism Quality Services Ltd (TQS), the private company currently designated as the AALA. As HSE does not have the resources or expertise necessary to perform the AALA duties, we are negotiating a time-limited contract with TQS so that they can continue to perform adventure activity licensing activities, but on behalf of HSE. The implementation plan is currently on target for completion by October 2006.

## **Argument**

7 TQS was designated as the AALA by a Designation Order (DO) signed by the Secretary of State in 1996 under the Activity Centres (Young Persons' Safety) Act 1995 (current DO is at **Annex 2**). A new DO will be needed to designate HSE as the AALA, but before the Secretary of State can sign a new DO, the Act requires a formal nomination to be made by the HSC. The Designation Order requires signing in both Westminster and Cardiff.

8 This paper asks the Commission to agree the nomination of the HSE as the AALA in place of TQS. DfES and WAG are currently the sponsors for the Activity Centres (Young Persons' Safety) Act and the AALA. The nomination will therefore need to be submitted to Lord Adonis at the Department for Education and Skills and Jane Davidson, Minister for Education and Lifelong Learning in Wales. Draft letters from the HSC Chair to Lord Adonis and Jane Davidson are attached at **Annexes 3 and 4**.

## **Consultation**

9 The HIP Board decided that, since the Government had formally accepted the Hampton recommendation on this issue, public consultation on HSE's nomination was neither appropriate nor necessary. We have consulted colleagues at DfES, DWP and the Welsh Assembly Government, as well as HSE's Legal Adviser's Office.

## **Presentation**

10 A communications and media plan is being developed for this merger.

## **Costs and Benefits**

11 TQS, as the current AALA, relies on its sponsoring department (DfES) to subvent any funding gap between its income stream (i.e. licence fees) and its expenditure. Currently this is around £0.5m pa. When HSE becomes the AALA, TQS will still rely on grant-in-aid but it will be channelled via DWP. Forecasting and realising income will be inherently unpredictable due to the nature of the licensing regime. HSE will manage the risk of any decline in the number of licensing applications, and therefore in income over and above the anticipated £0.5m pa, by approaching DWP to discuss a risk sharing arrangement.

## **Financial/Resource Implications for HSE**

12 The work to complete the merger can be managed within existing resources.

## **Other implications**

13 The target date for the merger (1 October 2006) is subject to successful negotiation of the contract and to the Designation Order being agreed in both the Westminster Parliament and the National Assembly for Wales.

## **Action/next steps**

14 The Commission is asked to agree:

- a) the nomination of HSE as the Adventure Activities Licensing Authority; and
- b) that the Chair sends the letters at **Annexes 3** and **4** to Lord Adonis and Jane Davidson.

**Contact**

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**ADVENTURE ACTIVITIES LICENSING AUTHORITY (AALA)**

Following a number of serious accidents and fatalities to youngsters involved in adventure activities, there was significant public concern that safety standards at some centres providing such activities were too low. In March 1993, four sixth formers lost their lives canoeing off Lyme Bay with a commercial company, and Parliament passed the Activity Centres (Young Persons Safety) Act 1995. This is an enabling Act providing for the introduction of regulations to control the commercial provision of certain adventure activities (caving, climbing, trekking or watersports) to school and other youth groups of under-eighteen year olds.

The Act requires the Secretary of State to designate a body to be the licensing authority – commonly referred to as the Adventure Activities Licensing Authority or AALA, which then issues licences to organisations wishing to provide these activities. Currently the AALA is Tourism Quality Services Ltd (TQS), a small company established for the purpose. The actual Authority is considered to be the TQS Board of Directors. TQS is a non-profit making company, which defrays part of its costs from licence fee income, the deficit being made up by grant-in-aid from the DfES.

The Adventure Activities Licensing Regulations 2004 give practical effect to the Act. They define the licensable activities in detail, specify who is required to hold a licence, provide for the appointment of inspectors, place various requirements on the AALA and empower it to collect fees. It is an offence to provide defined activities to those under 18 without a licence but AALA has no enforcement powers and enforcement is by the relevant enforcing authority for the HSWA (the regulations are relevant statutory provisions). AALA's only sanction is to refuse to grant a licence or to withdraw one.

DfES has responsibility for the Act in Scotland but the Welsh Assembly Government (WAG) has responsibility in Wales. There is formal liaison in both. DfES, HSE, WAG and Scottish Executive (SE) are all entitled to send observers to AALA Board meetings.

The AALA has about a dozen full-time staff, comprising senior inspectors and administrative officers, and a Chairman and Chief Executive who work part-time. The AALA also contracts with additional inspection staff at need on a temporary basis. There is a small HQ in Cardiff but the inspectors are home-based across Scotland, England and Wales. The period of the licence cannot exceed 3 years. If AALA refuses to grant or renew a licence, a provider may appeal to the Secretary of State for a determination; this is rare.

AALA is only responsible for the licensing regime and for the investigation of complaints about matters covered by licensing. HSE or the relevant local authority (LA) remains the enforcing authority for all other relevant health and safety legislation, any investigations (e.g. accidents) and for enforcement activity. Under the terms of a Memorandum of Understanding (MoU) HSE and LA inspectors do not undertake proactive inspections at centres. AALA is obliged to bring any matters of evident concern to the notice of the enforcing authority.

**1996 NO 771**

**Adventure Activities (Licensing) (Designation) Order 1996**

*Made - - - 18th March 1996* The Secretary of State, in exercise of the powers conferred by section 1(1) of the Activity Centres (Young Persons' Safety) Act 1995 hereby makes the following Order

**1 Citation, commencement and interpretation**

- (1) This Order may be cited as the Adventure Activities (Licensing) (Designation) Order 1996 and shall come into force on 16th April 1996.
- (2) In this Order "the Act" means the Activity Centres (Young Persons' Safety) Act 1995.

**2 Designation**

Tourism Quality Services Limited (being a body nominated by the Health and Safety Commission under section 1(2) of the Act) is hereby designated for the purposes of section 1(1) of the Act.

Lord Adonis  
Parliamentary Under Secretary of State for Schools  
Department for Education and Skills  
Sanctuary Buildings  
Great Smith Street  
Westminster  
London SW1P 3BT

Dear Andrew

Following on from the Health and Safety Commission's meeting on 9 May, I am writing in accordance with section 1(2) of the Activity Centres (Young Persons' Safety) Act 1995 (the Act) to nominate the Health and Safety Executive (HSE) for the role of the licensing authority.

When Philip Hampton presented his report "Reducing administrative burdens: effective inspection and enforcement" to the government last year, one of its recommendations was that the Adventure Activities Licensing Authority (AALA) be merged into the HSE. This recommendation was accepted by the Government. Officials from the HSE were charged with implementing that recommendation in conjunction with colleagues in DfES, Department for Work and Pensions (DWP) and the Welsh Assembly Government. I am delighted with the progress made by everyone concerned in moving this work forward.

Following extensive discussions, it has been agreed that this merger will be achieved by making HSE the AALA. Currently this role is fulfilled by Tourism Quality Services Ltd, a company based in Cardiff, which was designated the AALA by a Designation Order (DO) made in 1996 under the Act. To make HSE the AALA will require a new DO, but as indicated the Act also requires that the Health and Safety Commission first nominate the body taking on the role of the AALA.

The DO requires signature in both Westminster and Cardiff. If you accept this nomination, HSE and DfES officials will submit a draft DO for laying before Parliament. The DO will be laid first in the National Assembly.

I would be grateful for a response to this letter by 25 May.

I have written in similar terms to Jane Davidson, at the Welsh Assembly Government. I am copying this letter for information to Jane Davidson, Philip Hunt (DWP), Jim Murphy (Cabinet Office), Nick Ainger (Wales Office) and Patricia Ferguson (Scottish Executive).

**BILL CALLAGHAN**

Chair, Health and Safety Commission

Jane Davidson  
Minister for Education and Lifelong Learning  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

Dear Jane

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When Philip Hampton presented his report "Reducing administrative burdens: effective inspection and enforcement" to the government last year, one of its recommendations was that the Adventure Activities Licensing Authority (AALA) be merged into the HSE. This recommendation was accepted by the UK Government. Officials from the HSE were charged with implementing that recommendation in conjunction with colleagues in DfES, Department for Work and Pensions (DWP) and the Welsh Assembly Government. I am delighted with the progress made by everyone concerned in moving this work forward.

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The DO requires signature in both Westminster and Cardiff. If you accept this nomination, HSE and Welsh Assembly Government officials will submit a draft DO for laying before the National Assembly prior to laying before Parliament.

I would be grateful for a response to this letter by 25 May.

I am writing in similar terms to Andrew Adonis, DfES. I am copying this letter for information to Andrew Adonis, Philip Hunt (DWP), Jim Murphy (Cabinet Office), Nick Ainger (Wales Office), and Patricia Ferguson (Scottish Executive).

**BILL CALLAGHAN**

Chair, Health and Safety Commission