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## HEALTH AND SAFETY EXECUTIVE

### The HSE Board

#### Management of HSE's duties as Adventure Activities Licensing Authority

A paper by Peter Sargent

Cleared by Sandra Caldwell and Giles Denham on 26 February 2007

#### Issue

- 1 HSE management of the contract with Tourism Quality Services Ltd (TQS) as they carry out certain services in connection with HSE's duties as the Adventure Activities Licensing Authority (AALA).

#### Timing

- 2 Routine. The arrangements proposed need to be in place by 1 April 2007.

#### Recommendation

- 3 That the Board:
  - (i) accept the proposal for a management structure consisting of a Management Board and a Management Group;
  - (ii) notes the costs and risks to HSE's budget set out in paragraphs 14 to 20.

#### Background

- 4 TQS, a private company, was designated as the AALA in 1996 and has been doing the licensing work ever since in the capacity of an Executive NDPB of the Department for Education and Skills (DfES). Following the Government's acceptance of the Hampton recommendation that the AALA should be absorbed into HSE, it was agreed by the Hampton Implementation Board (HIB), and approved by the HSC, that HSE would be designated as the AALA. The HIB also agreed that the optimum delivery solution was to contract-out much of the work associated with the function.

- 5 Cabinet Office and TQS agreed that TQS' NDPB status be dissolved (one NDPB may not sponsor another). A commercial contract between TQS and HSE was signed on 21 December 2006. The new arrangements are expected to come into effect on 1 April 2007.

## Argument

- 6 TQS have been the AALA for over 10 years and have well developed procedures and practices. There is no reason to believe these are not fit for purpose but we will have to ensure that they fit with HSE practice. Standards of inspection and performance also need to be monitored.
- 7 It is anticipated that this will entail close involvement with TQS in the early days of the contract, reducing when confidence has built up. DfES are currently the sponsoring department for the adventure activities legislation but, when HSE's designation as the AALA takes effect, DWP will take over sponsorship. Neither HSE nor DWP have been involved in the licensing work to date. TQS have developed their own ways of working with relatively little input from DfES. →←
- 8 Following discussions between Giles Denham, Jane Willis and Sandra Caldwell, a Management group was set up in July 2006 to look into this and to formulate proposals. It recommends the following two-tier structure:
- i. a **Management Board**, which would be given delegated responsibility by HSE for ensuring that HSE fulfilled its statutory duties as the AALA and would, for practical purposes, be the AALA. It would also be responsible for overall policy on AALA matters (though subject to the HSC/E). It would take, or approve, all decisions on tricky issues referred to it by the Management Group. It would probably need to meet twice per year. It would include representation from CACTUS for operational policy interests.
  - ii. a **Management Group**, with day-to-day responsibility for managing the contract and TQS. This Group will need to meet frequently initially, possibly bi-monthly, scaling down to quarterly.
- 9 The Management Board would consist of:
- a chair at SCS level – Sandra Caldwell
  - the chair of the Management Group (see below) and the contract manager
  - two independent members with knowledge of the adventure activities sector (the current AALA Board currently has two independent members, one of whom would probably be willing to perform a similar function under the proposed new arrangements). We are currently exploring this in more detail.
  - a representative from CACTUS
  - observers from DWP, DfES, Welsh Assembly Government (WAG) and Scottish Executive
- 10 The Management Group would consist of:
- Alistair McNab (Chair)

- Julia Soave (Contract Manager)
- Peter Sargent (policy support)
- Gavin Howat (HSE operational support)
- Colin Giddings (LA operational support – nominated by LACORS)

## **Consultation**

- 11 This is primarily an internal HSE matter and FOD, PEFD, CACTUS, LAO have been consulted about this paper. DWP have been kept informed.

## **Presentation**

- 13 A press release, an item for e-express and routine Ministerial submission will be required. A meeting to introduce TQS inspectors to HSE is planned for 1 May, and this will also provide an opportunity to set out some of the new arrangements. There is ongoing public and political interest in adventure activities and sensible risk.

## **Costs and Benefits**

- 14 The main benefit arising from awarding the contract to TQS was to assure business capability and continuity. However, because TQS were formerly constituted as an Executive NDPB with DfES, an Exchequer liability exists for any costs arising from the dissolution of TQS as a company. Those Exchequer liabilities pass to HSE as the function transfers. HSE's Financial Memorandum precludes HSE underwriting liabilities but DWP has agreed TQS as an exception. The potential liability for the costs of rendering staff redundant by cessation of the contract is the main element. Those costs were assessed and certificated by an independent auditor at £55k as at 31 March 2007. The contract protects HSE from any future or ongoing liabilities arising, or being entered into, in respect of any superannuation scheme.

## **Financial /Resource implications for HSE**

- 15 The planned gross operating costs of TQS were budgeted for by DfES at £800k gross pa, £400k net. When licensing was introduced in 1996 the fees were set at a level which generated 50% of TQS' operating costs; the expected 50% shortfall was to be supported by grant-in-aid. Examination of the actual costs of the TQS operation in this and recent years (with one notable exception – see paragraph 18) supports £800k gross as a reasonable assessment and, in fact, TQS have been operating at slightly below that level while maintaining income. The grant to TQS is paid monthly based on actual requirements: £800k is not a budget as such – more an indicative maximum sum upon which they might draw.
- 16 While TQS exists almost solely to deal with adventure activities licensing, it can earn income (expectation currently between £20k and £40k) from other activities. The contract provides for all income from licensing or any other TQS activity carried out with resource funded by HSE to be used to reduce the grant

in aid required of HSE (the contract also deals with any potential conflict of interest issue).

- 17 HSE are bound by a DfES decision not to raise fees in 2007/08 but once the function is within HSE, active consideration will be given to the possibility of raising the fees over time so that fee income covers all operating costs.
- 18 There is a risk to HSE if TQS fail to realise planned income and cannot reduce their operating costs in line. In that event, HSE would be required to subvent TQS operating costs by increasing grant in aid. The risk of that is considered to be small under normal circumstances. However, income could fall due to circumstances beyond their control. When foot and mouth disease resulted in major restrictions on people's movement and activities the number of licence renewals and applications fell with a consequent, significant fall in TQS income and DfES had to raise the level of grant-in-aid. Should something similar occur in the future (eg pandemic flu) then a similar fall in income might occur. However, the number of licenses and, therefore, income, has actually been increasing year on year for the last few years.
- 19 The resource transfer from DfES to HSE has been effected as £800k pa gross, £400k net for 2007/08 and the SR 2007 years. → ← However, DfES are funding the first month of the TQS operation in 2007/08. Also, TQS have an expectation of earning between £20k and £40k external income. Those factors, together with a real prospect of a reduction in TQS overheads, should ensure enough headroom between the £800k gross and the actual grant TQS require to enable HSE to resource the cost of the Management Group's monitoring of TQS and the contract. The administrative costs associated with the AALA Management Board are expected to be small.
- 20 It is proposed that the Main Budget Holder for the AALA budget will be Justin McCracken as Director of Operations, with Sandra Caldwell, Director of Field Operations as sub-budget holder. The expectation is that if a material shortfall in TQS income occurs then this may be referred to the HSE Board for a corporate decision on the budgetary impact.

### **Other risks**

- 21 Adventure activities licensing is not a priority topic for HSE but there is a high level of public interest in this industry. The public demands a high level of assurance that when they allow their children to go on adventure activities as part of their compulsory education, they are going to be safe. Incidents simply reinforce the public perception that adventure activities are dangerous. →←
- 22 Operators dissatisfied with a TQS decision on licensing have the right to appeal to the SoS (National Assembly for Wales for those based in Wales) but only after TQS has formally notified its final decision. However, the AALA has to inform the operator beforehand that such action is being contemplated and this provides an opportunity to sort out any disagreements before the formal appeal process can begin. Disagreements will be handled by TQS initially and it is expected that the vast majority will be resolved at this stage but, if not, HSE will get involved. If HSE cannot secure an agreement, then the operator's only

recourse is to appeal to the SoS. The informal appeal process should not be very resource demanding but the formal appeal is likely to be more so. Formally, the responsibility for handling the appeal will fall to DWP but HSE will have to be closely involved. Such appeals are rare – there has only been one formal appeal since licensing began.

- 23 TQS is not currently within the Ombudsman's remit as it is a private company but when HSE becomes the AALA a dissatisfied operator could ask the Ombudsman to look into the way complaints or other issues have been handled. The operator who lodged a complaint with the SoS also asked the Ombudsman to look into it and although the Ombudsman declined to look into the appeal, consideration was given to the way that the appeal had been handled by the WAG (the WAG was responsible as the operator was in Wales) and found this to be in order. This might happen in the future especially as HSE will be subject to the Ombudsman at all points in the process. Such cases are expected to be rare.
- 24 When HSE takes over as the AALA all TQS's AALA records will become HSE's and thus subject to FOI. If there are any requests for information under this legislation, HSE will have to deal with them and resources will have to be committed to the work.

### **Environmental Implications**

- 25 None.

### **Other Implications**

- 26 The long-term aim is to take forward DfES's strategy of exploring the possibilities for an industry-led accreditation scheme for the sector. Policy Group will begin looking at this once the transfer to HSE is complete, subject to resources being available.

### **Action**

- 27 The Board is invited to note the proposals in this paper.