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Adventure Activities Licensing Authority Annual Report for 2007/2008			

Purpose of this paper

1. To present the annual report of the Adventure Activities Licensing Authority (AALA). This report covers the financial year ending April 2008 only.

Background

2. HSE became the AALA on 1 April 2007, having taken over the role from Tourism Quality Services Ltd (TQS), the previous AALA. More information on this can be found in section 1 of the attached Annex.

3. The HSE formally delegated its responsibilities in respect of the AALA to the AALA Management Board on 13 August 2007

4. Because HSE did not have the necessary specialist expertise to perform the functions required of it by the Adventure Activities Regulations 2004 (AALR) TQS have carried out most of the inspection and administration duties for us under contract.

5. TQS are a not-for-profit body. Their activities are funded by the collection of license fees, with any shortfall in running costs being made up from grant-in-aid channelled via DWP. At the end of each month TQS submits accounts for the month, along with an invoice for the balance of their running costs.

6. The AALA is required by regulation 4 of AALR to submit a report to the HSE Board after the end of each financial year. This is the report for the year ending 31 March 2008.

Argument

7. Details of the work carried out for HSE by TQS during the year (No of inspections, No of licences issued etc) are given in Annex 1 which is the report submitted to HSE by TQS.

8. The first year of the new arrangements has gone very smoothly due, in no small measure, to the excellent working relationship that has developed with TQS. After 10 years of being the AALA, TQS have at times been a little frustrated with the perceived bureaucracy of a civil service culture but have borne it all with good grace and full co-operation.

9. Management procedures set up to monitor the work done by TQS for HSE involved a number of joint visits with TQS inspectors. These have shown that TQS practices and standards are comparable to HSE's.

Costs and Benefits

10. The financial position is reported each month and is not covered by this report. For the 2007/08 financial year HSE paid TQS £320k from grant-in-aid which is in line with predictions made at the beginning of the year.

Financial/Resource Implications for HSE

11. The net cost of AALA in 2007/08 is covered by the budget transfer from DfES to HSE (net resource of £400k).

Other Implications

12. The contract with TQS expires in March 2010. HSE is beginning a review of the way in which it discharges its obligation to act as the AALA in preparation.

Action

13. The Board is asked to accept the report.

Paper clearance

14. This paper was cleared by the Senior Management Team at their meeting on 4 November 2008.

Adventure Activities Licensing Service

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Adventure Activities Licensing Services Interim Report
From 01.04.2007 – 31.03.2008

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1. Foreword

1.1 The adventure activities licensing scheme was introduced in April 1996 and for 11 years was administered by Tourism Quality Services Ltd. (TQS), a company designated as The Adventure Activities Licensing Authority (AALA or 'the Licensing Authority' or 'the Authority') by the Secretary of State.

1.2 As of 1st April 2007 the Health and Safety Executive (HSE) was designated as the Licensing Authority and contracted TQS Ltd. to carry out certain functions on its behalf. This includes, but is not limited to, the receipt and consideration of licence applications, inspections, and the granting or refusal of a licence. TQS Ltd. now carries out its contracted work under the name of the Adventure Activities Licensing Service (AALS or 'the Licensing Service').

1.3 This report covers the work of TQS Ltd. in fulfilling the contract during the period running from 1st April 2007 – to 31st March 2008. TQS Ltd. has always been, and remains, a not-for-profit company limited by guarantee.

2. Background to the licensing scheme

2.1 The adventure activities licensing scheme is the mechanism for the inspection and regulation for certain aspects of the delivery of adventure activities to young people as set out in the Activity Centres (Young Persons' Safety) Act 1995. The Act provides for this to be done by a not-for-profit organisation designated by the Secretary for State.

2.2 The (then) Department for Education and Skills (DfES now the Department for Children, Schools and Families - DCSF) had policy responsibility for the Adventure Activities Licensing Regulations (AALR or 'the Regulations'). This situation changed following the implementation of measures recommended in the Hampton Report of 2005. Responsibility since 1st April 2007 has been vested with the Department for Work and Pensions (DWP) for England and Scotland. The implementation of the Act is a matter devolved to the National Assembly for Wales. The Welsh Assembly Government (WAG) also designated the HSE as the Authority from 1st April 2007 so that for cases within the principality the AALA reports to the Minister for Children, Education, lifelong Learning and Skills.

2.3 The AALR came into force in 1996. The Scheme underwent triennial reviews in 1999 and 2002. The principal outcome was that there was no strong demand to fundamentally alter the scheme. Following the 2002 review however, several minor changes were made, and new regulations the AALR (2004) were laid in June 2004 to accommodate further updating. The changes included an increase in licence fees, and an amendment permitting inspections to take place in advance of the Licensing Authority receiving a licence renewal application, thereby enabling inspection to take place at the most appropriate time of year for the individual provider. (The term 'provider' is used to cover all those who are involved with the provision of adventure activity. Mostly it will refer to holders of a licence under the AALR but can include applicants and others whose scope is not within the scope of the Regulations.)

2.4 The licensing scheme operates under the written guidance of the HSE as detailed in 'Guidance from the Licensing Authority on the Adventure Activity Licensing Regulations 2004' (Ref: L77 Second Edition published 2007. ISBN 978 0 7176 6243 2).

3. The Functions of the Licensing Authority contracted to TQS.

3.1 TQS is contracted to consider applications to hold a licence from any provider of the adventure activities specified in the AALR. It is an offence under regulation 16 of the AALR to provide those adventure activities specified in the Regulations, without an appropriate licence. The specified activities (circa 28) fall under the general categories of watersports, climbing, caving, and trekking (in remote terrain on foot, cycle, horse or skis).

3.2 Following receipt of a licence application and the relevant fee, inspection of the provider's operation is undertaken by a duly appointed inspector. A report on that inspection is submitted, and the recommendations in the report are endorsed, or otherwise, by the Head of Inspection Services (HIS) who holds delegated authority within TQS. The HIS may where appropriate consult with other senior executives within TQS and/or the HSE before making a final decision. TQS, if minded to issue a licence, must do so under the conditions specified in the Regulations, although other non-standard conditions may also be added.

3.3 On rare occasions, TQS will either commence work on a licence application, or even issue a licence in advance, before having received the relevant fee. This is technically outwith the regulations. The lack of payment is nearly always from a Local Authority and has been caused by administrative inability to release the funds. As the majority of licenses expire during the summer months when Local Authorities have hundreds, if not thousands, of young people undertaking adventure activity it is felt that the refusal of a licence solely on finance grounds, would have a disproportionate affect on provision to the young persons whose activities would be curtailed at very short notice. Payment is normally received very quickly after the due date, and there has never been a case where payment has not been collected under this system. This problem was partly relieved after a single payment scheme was introduced when the 2004 Regulations came into force, as it was the second payment under the 1996 Regulations that used to cause the bulk of the problem.

3.4 If the provider contests the findings of the report their representation is initially considered by the Head of Inspection. If the provider remains unsatisfied, they may request consideration by the Licensing Authority. Finally, if the provider is still unsatisfied, they are advised of their right to make a formal appeal to the relevant national authority, and are given the process for doing this. In addition to the refusal of a licence, any variation, revocation, or imposition of any non-standard condition may be the subject of an appeal , as may any undue delay in the processing of the licence application.

3.5 During the 11 years of operations there have only been two appeals, and only one of these has remained an unresolved case with the applicant being dissatisfied with the working of the system. An appeal was made in this latter case but was dismissed by the Education Minister in Wales who was the relevant national

authority in that instance.3.6 TQS maintains a register of licensed providers on behalf of the licensing authority. This register is available to the public and the principal means of accessing it is via the AALS web site (aals.org.uk). The site contains information about the licensing scheme and information on a wide range of operational issues relating to adventure activities. Evidence, through direct contact with schools and local authorities, suggests that it has become standard procedure for them to check the Register of Licence Holders when arranging or approving a visit to an adventure activity provider, and that this service is welcomed.

3.7 In addition, TQS must consider complaints made to it relating to the provision of licensable adventure activities.

3.8 Because of its specialised expertise in adventure TQS Ltd is asked from time to time to liase with other agencies, or contribute to investigations. Its senior staff may also be asked to contribute to or comment on proposals by organisations such as National Governing Bodies of sport (NGBs), local authorities or government departments.

3.9 As well as formal training, they also attend presentations, meetings and seminars that may assist them in keeping up to date with regulations and industry practice that may affect their work.

4. Inspections

4.1 Inspections are carried out either:

- Following applications for the issue or renewal of a licence
- In anticipation of an application to renew a licence
- To investigate a complaint
- As a targeted or random spot check
- At the request of another agency.

The breakdown of number and type of inspection visit carried out by the Inspectorate can be found in Annex 1.

4.2 Inspections fulfil the following requirements:

- Check on compliance with the requirements of the Regulations and relevant health and safety legislation.

- Inform providers of recent developments and good practice in the safety management of adventure activities (often in the light of recent incidents and accidents).

4.3 Inspectors' meetings.

Consistency of inspections is maintained

- by following the written guidance of the HSE via the guidance publication L77.
- by following guidance issued by the HIS,
- by means of team meetings approximately every three months. These meetings are used to formulate proposals for the implementation of operational policy as well as disseminating it and sharing experience gained.

5. Licenses issued and refused

5.1 Before issuing a licence, the Regulations and L77 provide that the Authority must be satisfied that the applicant not only has appropriate measures in place to 'avoid as far as reasonably possible death or disabling injury', but that these measures will be applied on the ground and applied throughout the period of the licence. TQS, acting with delegated powers from the authority, applies the expertise accumulated over the past decade to making the judgement concerning the required satisfaction. Whilst always recognising the need for evidence based decision making, TQS is nevertheless making a judgement and it has never issued a licence unless it believes that young persons undertaking regulated activity will be reasonably safeguarded.

5.2 The number of licence holders runs as follows over the past 10 years:

1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
887	918	916	941	949	959	1008	1039	1052	1080	1134

(figures taken at 31st March in each year)

As shown, the number of licence holders increased steadily over that period. The underlying trend is for the rate of increase to accelerate; this acceleration is checked from time to time by factors other than demand for adventure activity, e.g. foot and mouth disease or a rise in the fees.

5.3 Licenses refused/revoked/varied

It should be noted that TQS does not take steps to refuse, revoke or vary a licence, lightly. Whilst many providers will have requirements made upon them in their reports because of the nature of the way they make provision, or because best practice has changed, it is only where TQS has concerns/evidence of purposeful non-compliance that it resorts to formal warning and/or eventual refusal or revocation of a licence.

5.4 Between 01.04.2007 and 31.03.2008 TQS **refused** 1 licence application, **revoked** 3 existing licences and **varied** (in this case, restricted) the terms of 2 other licences.

5.5 Notices to providers that TQS was 'minded to' refuse, revoke, or vary licences, were issued in a further 6 cases. In these cases the providers actioned the requirements made upon them by TQS in the allotted time, and TQS subsequently issued the licences.

5.6 When compared to most previous years of the Licensing Scheme this represents an increase in 'relevant action'. In all cases the relevant enforcement authority (HSE/LA) was informed of TQS' actions.

5.7 More detailed information for this section can be found in Annex 2.

6. Complaints

6.1 It is the remit of TQS to investigate complaints made to them regarding providers of adventure activities who have been issued with a licence. Complaints relating to activities or situations falling outside the scope of the regulations are referred to the relevant enforcing authority (i.e. the local authority or the HSE). In some instances TQS (because of the circumstances surrounding the complaint) have deemed it appropriate to investigate further so as to determine whether the complaint has implications on the licensable side of the operation. This is done under the auspices of ensuring the 'culture of safety' that exists within the operation (paragraphs 9-10 of L77). TQS has had no remit to investigate accidents.

6.2 During the reported period 16 complaints were received by TQS. Further detail about the substance of the complaints made and the actions of the Licensing Service can be found in Annex 3 to this report.

7. Administration of funds

7.1 In addition to its inspectorate function TQS has been contracted the task of receiving the fees payable by applicants, recording the expenditure on carrying out the contracted tasks, providing the Authority with monthly accounting for same, and providing forecasts and budgets as required.

7.2 As at 31/03/2008 the number of licence holders was 34 above the original forecast of 1100. Income, supported by additional earnings made by selling the expertise of TQS outside of the licensing regime, was therefore up (£483k against £435k). Meanwhile expenditure was marginally below forecast (£812k against £820k). Coupled with positive movements in cash flow, the requirement for public funds has been £313kas opposed to an original budget of £375k.

7.3 The detailed system utilised prior to April 2007 has been modified to take account of the new contractual arrangements. This has worked satisfactorily and TQS remains confident in the integrity of its figures.

7.4 In terms of financial and corporate risk, TQS is not aware of any threats to the company that might prejudice its ability to continue to fulfil the contract. There are inherent difficulties with making forecasts primarily due to the fees not being payable at a fixed moment in time. Costs are more easily forecast although in a small operation (under 15 employees) items such as maternity and injury/ill health to key staff can have a significant impact in percentage terms if not in absolute cash sums. As an example one member of the office staff in Cardiff has been on extended maternity leave during 07-08. This gave rise to over £10k of off-budget expenses and about a similar amount of internal costs, adding over 8% to total administrative expenditure.

8. Other Matters

8.1 April 2007 saw the transfer of responsibility from the (then) DfES to HSE. This was a complex process and has taken most of the year to complete.

8.2 One implication of the transfer was that HSE were able to recognise the 'culture of safety overall' nature of TQS' inspections, whereas DfES had only been able to recognise the narrow nature of licensable activities. This had been a longstanding anomaly (and weakness) of the inspection regime, and has the potential to significantly clarify the bigger picture for the sector, and will assist in the creation of a complimentary non-statutory matrix of accreditation scheme or schemes.

8.3 The investigation into the death of Joe Lister (on 14 November 2005) while caving at a licensed centre continued throughout the reported period. (This was the first fatality during a licensable activity since the AALR were introduced in 1996). Throughout the lengthy investigation TQS was unable to put the lessons learned from this tragic event either into the public domain, or circulate them to the other 320 providers licensed to offer caving activities. At the time of writing (April2008) this situation remains unchanged.

8.4 During the reported period inspectors have been able to assist HSE/LA/Police investigations into 4 further fatalities to young people, and one fatality to an adult, involved in (non-licensable) adventure activities. Following one of these TQS, in conjunction with local canoe/kayak hire companies, the British Canoe Union and the Welsh Canoe Association, produced good practice guidance for local hirers of canoes and kayaks. This has now been distributed to all providers in the area of the accident, and is available on the Licensing Service's web-site.

8.5 Following another of these tragedies the Licensing Service, in conjunction with the British Canoe Union and the Royal Yachting Association, produced new, up-to-date guidance on the use of personal floatation devices in recreational watersports. It is anticipated that this will sit alongside HSE's guidance on personal floatation devices in agriculture.

8.6 TQS continued to work with the Royal Geographic Society (RGS), the Adventure Activities Industry Advisory Committee (AAIAC), the Educational Visits Advisory Council (EVAC) and others to help develop various aspects of non-statutory accreditation schemes for non-licensable activities. Of these only one has reached fruition with the publication of RGS/BSI BS EN 8848 for overseas ventures. Most Local Authorities and many private companies will now find that their local arrangements now comply with the British Standard, thus achieving national accreditation for local agreements.

8.7 TQS has raised with the Institute of Outdoor Learning (IOL) and significant providers of activities for groups with challenged and challenging behaviour the safety of both instructor and young people following a number of such incidents. IOL is now piloting a training programme to address the safe and successful delivery of activities for these client groups.

8.8 The reported period saw the conclusion of BS EN 15567 –1 and –2 for ropes courses, which the Licensing Authority instigated in conjunction with leading ropes course activity providers several years ago, but which has now been taken forward by the European Ropes Course Association which has been transformed for the purpose. The initial aim was to ensure that this sub-sector of adventure activities had nationally accepted standards, which may be used to demonstrate compliance with the Working At Height Regulations.

8.9 The staffing of TQS, both its inspectors and its office staff, has remained remarkably stable since Licensing was introduced. Consequently roles have evolved as experience has been gained. Now one of the key members of the office staff, Laura Bridgwater, is moving on to pursue her theatrical career. A straight forward replacement for Laura is unlikely and so the management of the office functions, and liaison with the public and provides will need to be revised. We have been able to train other office staff to facilitate this revision without significant shortfall in effectiveness during this transition phase. TQS wishes to acknowledge the significant part that Laura has played in both the development and success of the Licensing Scheme.

9. A View to the Future

9.1 TQS, when designated as the AALA, and still today as the AALS, has always advocated minimal regulation. Save only in pursuit of the statutory duty to protect young people, the company has tried to minimise the burden on those who are subject to the Regulations it administers. Subject only to these two priorities, TQS then aims to minimise the resources required by the public sector to implement the Regulations.

9.2 For the future TQS would be content with any arrangements that continued to provide the equivalent level of assurance that currently exists. It believes that this is best achieved by independent monitoring supervised by a not-for-profit organisation.

10 Summary

10.1 The new arrangements commencing in April 2007 have been successfully implemented between DWP, WAG, HSE and TQS.

10.2 Those regulated under the licensing scheme have seen little difference, thus achieving the goal of a seamless transition.

10.3 The total number of licence holders is now almost 30% above where it was a decade ago.

10.4 The cost to the exchequer is now at its lowest level since 1999.

10.5 TQS believes that its long held views concerning the future of safety management in this sector are still valid today.

Annex 1: Number and Type of Inspections carried out 01.04.2007 to 31.03.2008

	Main Scheduled Inspections			Supplementary Inspections		
	No. of Inspections	Total Hours	Average Hours	No. of Inspections	Total Hours	Average Hours
April	57	196.5	3.44	16	42.80	2.67
May	80	284.95	3.56	15	49.49	3.29
June	97	387.98	3.99	14	43.40	3.10
July	81	309	3.82	28	72.20	3.61
August	51	189.5	3.71	19	62.25	3.27
Sept	31	119.3	3.84	18	51.0	2.83
Oct	31	111.86	3.60	34	99.65	2.93
Nov	24	82.8	3.45	14	41.75	2.98
Dec	14	46.15	3.29	5	14.7	2.94
Jan	48	154.65	3.22	6	25.25	4.21
Feb	32	104.85	3.28	1	5.5	5.5
Mar	46	159.85	3.47	5	17.5	3.5
TOTALS	**592**	**2147.39**	**3.62**	**175**	**525.49**	**3.00**

	Spot check inspections		
	No. of Inspections	Total Hours	Average Hours
April	2	1	5
May	16	23	1.43
June	4	21	0.5
July	10	10	1
August	6	5.15	0.85
September	5	7	1.35
October	2	3.7	1.85
November	5	5.25	1.05
December	1	0.5	0.5
Jan	1	0.75	0.75
Feb	1	1	1
Mar	2	0.75	0.37
TOTALS	**55**	**60.2**	**1.09**

The total number of inspections under the AALR therefore, was 822. The recorded hours are ‘contact’ hours only.

Note:

Main Inspections - Inspections carried out directly in relation to an application for a licence, or the renewal of a licence having been received by TQS. Wherever possible this includes both an inspection of management systems and the observation of an activity session taking place which allows the inspector to compare theory with practice. These inspections always result in a recommendation on whether to issue a licence.

Supplementary Inspections – Inspections carried out either:

- in anticipation of an application;
- to view an activity session where it was not possible to view one at the time of the management inspection; or
- to follow up on requirements made at a previous inspection.

Spot Check Inspections - Either targeted or random spot-checking inspections.

Annex 2: Licence Refusals/Revocations and Variations

For this reporting period the refusals/revocations/variations are as follows:

Licence Refusal Statistics Between 1st April 2007 and 31st March 2008

Total number of refused licences	1
Total number of revoked licences	3
Total number of varied licences (part refusal)	2
Other notices of intent to refuse/revoke licences, issued	6
Total	**12**

Of these 12 cases, inspections had identified multiple failings relating to:

Lack of evidence of appropriate competence levels of leaders/instructors	9 out of 12
Inadequate risk management/operational procedures or practices.	6 out of 12
Inadequate equipment/ equipment checks	5 out of 12
No direct access to Technical Advice	5 out of 12
Inadequate management/monitoring roles	6 out of 12
Inspector unable to get access to inspect	1 out of 12

Following the issue of the notices, 6 providers actioned the requirements made upon them,
and TQS was subsequently able to issue them with the appropriate licence.

RELVANT ACTION

Action Taken	**Running Total to 31/03/07 (TQS as the AALA)**	**Period 01.04.07 – 31.03.08 (HSE as the AALA)**
Licences refused/revoked	52	4
Licence refused in part	13	2
Notices of intent to refuse licence.	95	6

Annex 3: Complaints

Complaints received by TQS for the period 01.04.2007 – 31.03.2008

1. Complaints were made by:

Member of the Public (including parents)	10
Other Providers	2
Public Body	1
Employee/Ex-employee	2
Total	**16**

Of these:

Non licence-holders	2
Licence-holders where complaints related to matters **not** in scope of the AALR	6
Licence-holders where complaints related to matters in scope of the AALR	8
Total	**16**

Action taken in respect of all complaints:

Referred to relevant authority	2
Issues addressed/to be addressed at next scheduled inspection	2
Unannounced visit	1
Matter resolved via other means (e.g. correspondence)	9
No investigation deemed necessary	2
Total	**16**

The 2 cases relating to non-licence holders were referred directly to the relevant authority.

6 cases did not strictly come within scope of licensing. They related instead to: adult participants, climbing wall activities, customer service issues, or related to activities operated outside of GB. Where issues related to activities it was deemed appropriate to deal with them because of the expertise and knowledge of the provider's operation that exists within TQS.

Of the 8 cases where activities fell within scope of the AALR the following allegations were made. In some cases allegations against a provider covered more than one issue.

Operating activities that weren't on the licence schedule	1 of 8
Deployment of unqualified staff	2 of 8
Deficiencies in group management	3 of 8
Deficient operational practices	4 of 8

Findings of the investigations undertaken:

Allegations deemed unjustified	3
Allegations deemed unsubstantiated	3
Allegations deemed justified in part	1
Allegations deemed justified	1

In all cases where investigations of allegations were found to be justified either wholly or in part, providers were instructed to make appropriate improvements to their operation.