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THE ANNUAL REPORT OF THE ADVENTURE ACTIVITIES LICENSING AUTHORITY

Purpose of the paper

1. To present the Annual report of the Adventure Activities Licensing Authority (AALA).

Background

2. HSE has been the AALA since 1 April 2007. Most of the inspection and administration work associated with the licensing scheme is carried out under contract by Tourism Quality Services Ltd (TQS) on HSE's behalf.
3. TQS is a not-for-profit company. Its activities are funded by the collection of licence fees, with any shortfall in running costs being met by HSE on a monthly basis.
4. The AALA is required by Regulation 4 of the Adventure Activities Licensing Regulations 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 2014.
5. Fee income in the year was just under £492,000 compared to £450,000 in 12/13. This reflects an increase in the number of licence holders (1238 at 31 March 2014 compared with 1219 at March 2013). HSE support to the licensing service was £417,000.
6. The pause in the implementation of the recommendation to abolish the AALA in *Common Sense, Common Safety* remained in effect during the report period. HSE ensured that the licensing regime continued as normal. Ministers have now confirmed that the AALA will remain although its future home and sponsorship are not yet decided.

Argument

7. Details of the work carried out by TQS for HSE during the year (number of inspections; number of licences issues/revoked; complaints and so on) are in the report submitted to HSE by TQS (Annex 1).

8. A total of 864 inspections were conducted, with 656 related to licence applications and 162 related to supplementary and spot check inspections (46). This is an overall rise from the previous year as a result of an increase in renewals and new applications. There has been a small reduction in the number of supplementary inspections as more inspections are completed in a single visit and a gradual increase in the average duration of licences.
9. Two licences were refused this year (both renewals), one licence was revoked as the provider did not provide the required information and made no subsequent contact with AALS and the other provider decided not to proceed with the renewal application.
10. The main reasons for refusal or revocation are as in previous years; an inability to demonstrate staff competence, that safety equipment is being checked; failure to put emergency procedures in place and a lack of management oversight of safety arrangements.
11. Arrangements continue to work effectively, aided by regular meetings between HSE officials and TQS. Joint visits and liaison meetings with TQS inspection team help ensure consistency of approach. AALA continues to provide operational support to FOD and LA inspectors as required.

Devolved Administrations

12. Adventure activities licensing is a devolved matter.
13. The Welsh Assembly Government has decided that they will retain statutory licensing in Wales but have not announced any decisions on what any future regime in Wales may look like.
14. Scottish Ministers have decided that they will retain statutory licensing in Scotland and will seek to appoint their own AALA in due course. Scottish Government officials have begun work with the adventure activities sector in Scotland to enable the drafting of regulations for Scotland. They are also working with HSE officials on the necessary legislative instruments to transfer powers over licensing to the Scottish Government.
15. HSE officials remain in contact with colleagues in Edinburgh and Cardiff.

Action

16. The Board is asked to accept the report.

Paper clearance

17. This paper was cleared by HSE's Senior Management Team on 3 September 2014.

Adventure Activities Licensing Service

44 Lambourne Crescent, Cardiff Business Park, Llanishen, Cardiff CF14 5GG
Tel: (029) 20755715 Fax: (029) 20755757 Email: info@aals.org.uk Web: www.aals.org.uk

Adventure Activities Licensing Service Report **From 1st April 2013 – 31st March 2014**

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1. Foreword

- 1.1 The adventure activities licensing scheme was introduced in April 1996 thus implementing the Activity Centres (Young Persons' Safety) Act 1995 and the Adventure Activities Licensing Regulations 1996, revised 2004. For 11 years it was administered by Tourism Quality Services Ltd. (TQS), a company designated as The Adventure Activities Licensing Authority (AALA) by the Secretary of State.
- 1.2 On 1st April 2007 the Health and Safety Executive (HSE) was designated as the AALA and contracted TQS to carry out certain functions on its behalf. These include, but are not limited to, the receipt and consideration of licence applications, inspections, and the granting or refusal of a licence. TQS carries out its contracted work under the name of the Adventure Activities Licensing Service (AALS).
- 1.3 This report covers the work of AALS in fulfilling the contract during the period running from 1st April 2013 to 31st March 2014 (the reporting year). AALS 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 of certain aspects of the delivery of adventure activities to young people as set out in the Activity Centres (Young Persons' Safety) Act 1995 and the Adventure Activities Licensing Regulations 2004 (AALR).
- 2.2 AALS 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).
- 2.3 This guidance states: "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 opportunities to experience exciting and stimulating activities outdoors while not being exposed to avoidable risks of death and disabling injury."

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

- 3.1 The following functions are contracted to the AALS:
 - receive applications for new licences and the renewal of existing licences;

- collect licence fees;
- consider applications for licences against the criteria in the regulations;
- inspect providers' activities/premises/management systems etc as appropriate;
- prepare a report following inspection;
- decide if a licence should be granted or not;
- inform applicant of decision;
- handle first stage of complaints and appeal procedures;
- refer unresolved complaints/appeals to the AALA;
- maintain a publically accessible register of licensed providers;
- liaise with, and assist, enforcement authorities;
- such other duties as may be from time to time requested by the AALA.

4. Inspections

4.1 Initial scheduled inspections are carried out:

- Following applications for the issue or renewal of a licence. 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 for a sample of activities. These inspections generally result in a recommendation on whether to issue a licence.

4.2 Supplementary scheduled inspections are carried out:

- In anticipation of an application to renew a licence;
- If it was not possible to complete all aspects of the main inspection e.g. activity inspection at a separate venue or time;
- To follow up on requirements made at a previous inspection;
- To investigate a complaint;
- At the request of the AALA or another agency.

4.3 Spot check inspections are carried out:

- As part of a targeted schedule of checks;
- As part of a number of random unannounced checks.

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

5. Licences issued and refused

5.1 The number of licence holders runs as follows for selected years since licensing was fully implemented (*figures taken at 31st March in each year*);

1998	2000	2002	2004	2006	2007	2008	2009	2010	2011	2012	2013	2014
887	916	949	1008	1052	1080	1134	1182	1205	1235	1214	1219	1238

5.2 Licences refused/revoked/varied:

In the reporting year notices to providers that AALS was considering refusing, revoking or varying licences were issued in 9 cases. In 7 cases the provider actioned the requirements made upon them by AALS in the allotted time, and AALS subsequently issued or continued the licence. AALS therefore had to refuse 2 renewal applications. In 1 case no information was provided and there was no subsequent contact from the provider. In the 2nd case, the provider decided not to proceed with the renewal application.

5.3 Giving providers specific 'required action' and ensuring that they are completed, is the means by which the Licensing Scheme is able to provide assurances that "good safety management practice is being followed" in a way that is proportionate. (Quote from Guidance from the Licensing Authority on the Adventure Activities Licensing Regulations 2004 (L77) page 1, paragraph 1)

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

6. Complaints

6.1 Regulation 11(1) of the AALR states "The Licensing Authority shall consider any complaints which it receives relating to the provision of facilities for adventure activities by licence holders and shall, if it considers it necessary, cause those complaints to be investigated."

6.2 Where issues related to out of scope activities offered by a licensed provider, it was deemed appropriate to deal with these because of the expertise and knowledge of the provider's operation that exists within AALS. Enforcement authorities are notified if a satisfactory resolution is not or cannot be resolved by this means.

- 6.3 Where a complaint refers to an issue which is not relevant to the AALS (for example, complaints relating to customer care, financial issues, etc.) the complaint is referred directly to the relevant authority.
- 6.4 Where activities are offered by an un-licensed provider the complainant is advised to whom they should make their complaint.
- 6.5 In the reporting year, 18 complaints were received by AALS. Further detail about the substance of the complaints made and the actions of AALS can be found in Annex 3 to this report.

7. Administration of funds

- 7.1 The AALS provides the AALA with forecasts and budgets as required under the contract although it was not been possible to do so in the winter/spring of 2013-14 as the contract was due to expire in September 2014. A new budget will be issued following the issue of any new or extended contract.
- 7.2 The AALA had informed the AALS that the net funds available to support the work of the AALA for 2013-14 would be £400,000, the same budget figure as for 2012-13, but £10,000 less than Actual 2012-13.
- 7.3 Following various official statements concerning the continuation of licensing for the immediate future fee income held up well with a final total of just under £492,000 (as against a forecast of £478,000). This compared favourably with 2012-13 when the forecast was £490,000 but actual income only £450,000 partially owing to the uncertainty surrounding the licensing legislation.
- 7.4 As a result total expenses were contained within the £400,000 budget even after some advantageous front loaded payments had been made for certain costs e.g. Health Care and Rates.
- 7.5 AALS results for the year ended 31st March 2014 have been audited, and show no material differences from draft figures submitted to AALA in April 2014.
- 7.6 TQS Ltd. is not aware of any threats to the company that might prejudice its ability to continue to fulfil the contract. However due to the continuing uncertainty over the future of licensing, which results in short term contract working, any forecasts of income and related expenditure continue to be currently less reliable than before. This may impact on the net level of public support required to maintain the contracted services.

8. Joint Inspections

8.1 Joint Inspections / Work with Other Agencies

In the reporting year, Senior Inspectors and/or the Head of Inspection spent a total of 298 hours (not including travel time) on:

- Joint visits with HSE/ LA enforcement
- Preparing reports for HSE/LA enforcement

See Annex 4 for more information on assistance provided.

Annex 1: Number of Inspections per month carried out in the reporting year compared with prior reporting year.

Main Scheduled Inspections

	The Reporting Year	Prior Reporting Year
April	62	68
May	96	91
June	100	64
July	86	73
August	55	52
September	36	31
October	29	39
November	24	31
December	24	25
January	38	38
February	47	54
March	59	63
Totals	656	629

Supplementary Scheduled Inspections

	The Reporting Year	Prior Reporting Year
April	10	12
May	8	10
June	21	14
July	23	31
August	34	31
September	15	21
October	23	31
November	7	11
December	4	1
January	6	2
February	7	2
March	4	1
Totals	162	167

46 spot checks were also carried out in the reporting year, compared with 40 during the prior reporting year.

The total number of inspections under the AALR therefore, was 864 in the reporting year, compared with 836 in the prior reporting year.

Number and Type of Inspections carried out from 2007/8 to 2013/14

Report Type	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Main	592	643	636	623	648	629	656
Supplementary	175	175	279	280	237	167	162
Spot check	55	33	42	57	44	40	46
TOTAL	822	851	957	960	929	836	864

Annex 2: Licence Refusals/Revocations/Variations

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

Licence Refusal Statistics in the reporting year

Total number of cases where we considered refusing, revoking or varying	9
Adequate remedial action achieved	7
Total number of refused licences	1
Total number of revoked licences	0
Renewal application withdrawn by provider on receipt of Notice	1

Of these 9 cases, inspections had identified failings relating to:

Staff records of competence	5
Induction and monitoring of staff and activities	5
Written procedures (establishment and review)	4
Equipment checking	3
Appointment & use of Technical Advisor	3
Required audit of school activity provision under local authority licence	1
Employer's responsibilities	1
Total	22

NB: The above categories are not mutually exclusive i.e. some providers had more than one problem. Indeed most refusals/revocations are for multiple reasons.

Relevant Action Taken

	09/10	10/11	11/12	12/13	13/14
Total of providers who, at least initially, did not meet the requirements of AALR	12	13	6	12	9
Number of considerations rescinded	8	10	5	8	7
Number of Licences Refused	1	1	0	2	1
Number of Licences Revoked	3	2	1	1	0
Renewal application withdrawn by provider on receipt of Notice	-	-	-	1	1

Annex 3: Complaints

18 complaints were received by AALS in the reporting year

Complaints were made by:

Member of the Public (including parents)	8
Other providers	3
Ex employee	3
School	1
Public Body (Environmental Health Officer)	1
Caving NGB Trainer/Assessor	1
HSE employee in personal capacity	1
Total	18

Of these:

Licence holders where complaints related to matters in scope of the AALR	9
Licence holders where complaints related to matters not in scope of the AALR	6
Non licence holders	3
Total	18

Action taken in respect of all complaints:

Issues addressed at next scheduled inspection	1
Arranged visit	2
Matter resolved by some other means (e.g. telephone call, e mail)	7
No investigation deemed necessary	1
Referred to enforcing authority	5
In Process	2
Total	18

Of the 9 relevant complaints against licence holders, the allegations concerned:

In scope of AALR:

- No safety boat on licensable watersports session
- Staff procedures in dealing with an emergency during rafting session
- Unsuitable footwear for gorge walking activity
- Evacuation procedures from Duke of Edinburgh Award expedition
- Faulty safety boat (in process)
- Caving group sizes and ratios
- Method of accessing a cave

- Treatment of casualty following mountain bike accident
- Alleged gelignite in cave used by groups & ignored by instructor / instructor not sufficiently qualified

Complaints not in scope of AALR:

- Buoyancy aids used on hire sessions / procedures on archery sessions
- Canoe hire session
- Safeguarding issue
- Lack of safety cover for sit on top kayak hire session
- Wages issue
- Care received on organised activity week.

Of these 15 cases involving licensed providers, following investigation, the allegation regarding no safety boat being available during a licensable watersports session was deemed to have been justified. The inspector spoke to a senior member of staff on the phone and was satisfied that the incident had been thoroughly considered by the staff and that measures had been put in place to prevent a recurrence.

2 were deemed to have been unsubstantiated:

- Staff procedures in dealing with an emergency during rafting session
- Treatment of casualty following mountain bike accident (This complaint resulted in a result for information under the Freedom of Information Act by the complainant.)

6 were deemed to have been not justified:

- Unsuitable footwear for gorge walking activity
- Evacuation procedures from Duke of Edinburgh Award expedition
- Caving group sizes and ratios
- Method of accessing a cave
- Alleged gelignite in cave used by groups & ignored by instructor / instructor not sufficiently qualified
- Buoyancy aids used on hire sessions / procedures on archery sessions

The complaint regarding a faulty safety boat is due to be the subject of a joint visit with a senior inspector and a local authority Environmental Health Officer. Separate complaints were made to the local authority which do not relate to adventure activity provision.

Of the 5 cases referred to the Enforcing Authority, the following outcomes are known:

- Canoe hire session – an AALS inspector accompanied a local authority Environmental Health Officer on a visit to the provider. The complaint was found to have been not justified.

- Safeguarding issue – the school at the centre of the allegation has subsequently closed down. No fault was found with the licensed provider.
- Lack of safety cover for sit on top kayak hire session – having visited the provider, the local authority Environmental Health Officer was satisfied that no further action was necessary.
- No further information available on complaints regarding wages issue and care received on organised activity week.

The 3 complaints received against non-licensed providers concerned:

- A college group using unsafe areas of a mine
- An unlicensed provider allegedly leading licensable caving activities and the same provider allowing graffiti in a cave
- The guides provided for a London to Paris cycle event.

In the case of the college group using unsafe areas of a mine, a senior inspector contacted the instructor and offered advice. The unlicensed provider allegedly leading licensable caving activities was contacted: he maintained that young people are always accompanied on the activity by a parent or legally appointed guardian, making the activity exempt from licensing. The Licensing Service has no authority to investigate the claims regarding graffiti but understand that these are being investigated by the relevant authority. The complainant regarding the London to Paris cycle event was advised to contact British Cycling.

Annex 4 – Work with Other Agencies

- 1) Assisted local authority Environmental Health Officer (EHO) with two site visits, review of information, advice reference withdrawal of a prohibition notice and then prepared a court ready report following an accident in which a young person was injured by a propellor during an improvised rafting session at a licensed centre. The case was referred to HSE.
- 2) Assisted local authority EHO following an accident on a high ropes course at a licensed centre. 2 meetings, a site visit and then a report providing opinion as to what needed to happen prior to the course opening. EHO have recently announced they intend to prosecute.
- 3) Advice following accident on a tree climbing activity at a non-licensed country park; Assisted local authority EHO, one meeting and reviewing evidence. Case still in progress.
- 4) E mail and telephone support for local authority EHO following two separate accidents on the same day on a zip wire at a non-licensed centre being used as apart of an adventure race. Prohibition notice issued.
- 5) Assistance provided to HSE regarding investigation into a climbing incident. Report written following site visit in March 2013. HSE decided not to pursue investigation further.

- 6) Assisted local authority EHO in connection with an incident on a zip wire at a licensed centre. Advised on equipment, methods of using zip wires and previous AALA inspections of centre. Several telephone discussions, a meeting and three or four reports. Centre is appealing against an enforcement notice to change method of clipping into sling/cowstail. On going.
- 7) Joint work with local authority EHO in connection with their project on zip wires. Accompanied them for 2 joint visits, a further visit to look at a commercial provider and commented on draft guidance/information documents.
- 8) Assistance provided to HSE regarding an incident on Snowdon involving a school group. Two files of evidence reviewed and a court ready expert witness report on the incident written. The outcome was that no prosecution would take place and lessons learned disseminated (in trade press and at relevant inspections).
- 9) Liaison with HM Principal Inspector of Health and Safety, regarding two potential FAI's which an inspector submitted reports on in 2012. This amounted to several telephone exchanges, and a couple of e-mails providing some additional information.
- 10) Liaison with local authority Environmental Health department regarding complaints made against a licensed provider. Telephone and e mail exchanges.
- 11) Assisted local authority EHO with investigation into incident at a licensed centre where an instructor fell from a zip wire whilst carrying out maintenance. Attended meeting with EHO, wrote and reviewed reports. The cause of the incident was found to be operator error. No prosecution followed although the EHO did make some recommendations to the provider.
- 12) Assisted local authority EHO with investigation of incident on indoor climbing wall where a 9 year old girl got caught on the wall with her helmet. Telephone conversations with EHO, background research and provided EHO with evidence of some previous incidents of the same nature. No prosecution.