

# *Adventure Activities Licensing Service*

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## **Adventure Activities Licensing Service Report** **From 1st April 2015 – 31st March 2016**

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- 1. Foreword**

- 1.1 The adventure activities licensing scheme was introduced in April 1996 and implements 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 In 2007 the Health and Safety Executive (HSE) was designated as the AALA and contracted TQS to carry out the day to day functions of the scheme 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 2015 to 31st March 2016 (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 providers 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 the applicant of their decision;
- issue a licence as appropriate;
- handle the first stage of complaints and appeal procedures;
- refer unresolved complaints/appeals to the AALA;
- maintain the AALA public register of licensed providers on-line;
- 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:

- As provided by the 2004 Regulations inspections of new applicants are carried out following application. For existing licence holders inspections may be carried out either following application or up to one year in advance of their scheduled renewal date.
- 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:

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

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 31<sup>st</sup> March in each year*);

1998	2008	2009	2010	2011	2012	2013	2014	2015	2016
887	1134	1182	1205	1235	1214	1219	1238	1243	1267

- 5.2 Licences refused/revoked:

In the reporting year notices to providers that AALS was considering refusing or revoking licences were issued in 23 cases. In 18 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 3 applications and vary 2 licences.

Two refusals were in respect of new licence applications and the providers decided not to proceed with their applications. The third refusal was in respect of a renewal application and the provider did not provide the required information within the required deadline. However they did subsequently provide the required information and their licence was renewed after a gap of four months.

Two providers had their licences varied by each having one activity removed from their licence. In one case the activity was re-instated to their licence following receipt of required information.

- 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, 16 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. Letters to Unlicensed Providers**

- 7.1 In the reporting year, AALS received 26 reports of unlicensed providers who appeared to be offering activities that fell within scope of AALR but without holding an adventure activities licence.
- 7.2 Each of these providers was sent a standard letter. For latest version see Annex 4.
- 7.3 Of the 26 providers contacted, 18 advised that they were operating out of scope, 4 subsequently applied for a licence, 2 advised that they did not provide activities but acted as agents and 1 is no longer operating. A further provider advised that he would be applying for a licence, but no application has been received at the date of this report. This provider will be contacted again and, if there is no response, his details will be passed to the relevant enforcement authority.
- 7.4 Whilst all unlicensed providers contacted this year have responded, if they had not, AALS would have passed the provider's details to the relevant enforcement authority and advised AALA that they have done so. The enforcement authority is empowered to investigate further, the AALS is not.

## **8. Funding and Administration of funds**

- 8.1 For some time now AALS has operated under an interim regime scenario pending resolution between UK Government departments and the devolved administrations as to the future of licensing. This means that certain detailed requirements of the contract cannot be met owing to short term timing issues e.g. the length of the remaining contract. This has not affected the ability of AALS to deliver the services and there is no current implication that it might in the foreseeable future. However there is now an accumulating problem with respect to financing.
- 8.2 It is felt necessary to reproduce here a paragraph from last year's report viz. *"The AALA had informed the AALS that the net funds available to support the work of the AALS for 2014-15 would be £400,000, the same budget figure as has been available since the HSE was designated as the AALA in 2007. As time has passed, the combination of cumulative inflation (+22%) and increasing numbers*

*(+15%) has gradually made it harder to meet this limit. Later AALA informed AALS that a further £20,000 was available.”*

- 8.3 That report went on to note that the result was that the budget was met and some £40,000 of advance payments for 2015-16 had been made to take advantage of discounts available for ‘up front’ payments e.g. for Rates and Health care insurance.
- 8.4 For 2015-16 no additional £20,000 was available and meanwhile costs continue to creep up slowly – largely owing to the fact that of the £900k gross cost of the service, approximately £750k relates to skilled labour or contractors whose costs continue to increase at above the general rate of inflation. Then there has been the impact of contractual changes. As an example AALS is now required to permit on-line payments of fees. The result has been that bank and e-services charges which were £1,512 in 2010-11 had risen to £4,833 in 2015-16. [The concomitant saving of postage has been marginal down from £1,920 to £1,780.]
- 8.5 Meanwhile it is hard to increase productivity ‘at the coal face’ i.e. for the inspectorate, without compromising the rigour of the inspections and thus the safety of young persons.
- 8.6 Furthermore there is a recent pressure on income. In brief this is due to the average length of licence increasing. The detailed math can be supplied, but to summarise, if 50 providers move from having a 1 year licence to a 2 year licence and 50 move from a 2 year licence to a 3 year licence then the average annual income reduces by around £25,000. The result is that, despite the numbers in the system remaining at record levels (around 1275), the annual fee income is at best static, and at points in the two year cycle actually declining.
- 8.7 The causes of the shift are complex and it has taken time for their effects to work through. Minor changes were made to the criteria for length of licence in 2013. These were introduced to improve the consistency of interpretation of the principles determining the frequency of inspections as set out in paragraph 71 of Guidance from the Licensing Authority (L77). As an example the ‘churn’ rate, i.e. the numbers dropping out versus new applications affects the issue. More new applications tend to have two or three year licences as opposed to the one or two year licences held by providers who allowed these licences to lapse. In 2014-15 there were 86 new applications, in 2015-16 only 58. In the background have been two other drivers. Firstly the recovery from the 2008-9 recession has led to better profitability and more stability. Second the announcement that licensing was after all not likely to be abolished has again given providers the incentive to remain in the system.
- 8.8 Regardless of detailed causes, the result is that costs are rising and income is not. Meanwhile there has been no fee increase since 2007. AALS has done its best to keep to the unchanging funding, but the limit is now approaching. Thus for 2015-16, to remain within the £400k limit it was necessary to forgo some of the advance payments made in 2014-15, so that the carried forward figure was only £15,000 instead of £40,000.

- 8.9 For the current year of 2016-17 it should be just possible to remain within £400k but should the AALS still be operating for the whole of 2017-18 it will not be possible without an uplift in funding or a change in the inspecting regime. Any such change would need to be flagged well in advance as the ability to reduce costs in the short term is very limited indeed. [NB the funding uplift could be achieved via a fee uplift covering a decade of inflation.]
- 8.10 Meanwhile with regard to the administration of funds, the AALS results for the year ended 31<sup>st</sup> March 2016 have been audited. The audited figures show no material differences from draft figures already submitted to AALA in support of invoices to date.
- 8.11 TQS Ltd. maintains internal checks on its financial operations and is not aware of any discrepancy or losses within the funds that it administers. However, the annual audit apart, it does not utilise independent monitors owing to the relatively small sums involved overall.
- 8.12 TQS Ltd. is not aware of any threats to the company that might prejudice its ability to continue to fulfil the functions noted at 3.1. However due to the continuing uncertainty over the future form of licensing, which results in short term contract working, any forecasts of income and related expenditure continue to be less reliable than before. In addition to the matters noted above, this too may impact on the net level of public support required to maintain the contracted services.

## **9. Joint inspections / Work with Other Agencies / Other Relevant AALS activity during the Reporting Year.**

- 9.1 In the reporting year, Senior Inspectors and/or the Head of Inspection spent a total of 317.95 hours (hours when the Senior Inspector and/or Head of Inspection were not available to do their normal duties, including travel time) on:
- Joint visits with HSE/ LA enforcement
  - Preparing reports for HSE/LA enforcement

See Annex 5 for more information on assistance provided.

- 9.2 The AALS continues to disseminate relevant safety information to the wider adventure activity sector. This generally takes the form of:

InfoLog entries. These are hosted on the website of the Institute Of Outdoor Learning (IOL) but can be accessed via a link on the HSE/AALA web site. These short pieces generally result from an incident or accident that comes to our attention. They take the form of a short anonymised narrative followed by general or specific Lessons Learned. Inspectors bring particular InfoLog entries to the attention of relevant providers.

Longer articles are written either by the Head of Inspection or one of the Senior Inspectors, approved by HSE, and published in adventure activities sector publications such as Professional Mountaineer or IOL's Horizons quarterly magazines.

- 9.3 The AALS has carried out a number of joint inspections with inspectors from the Royal Yachting Association (RYA) as part of a pilot project with the RYA. The aim of the pilot is to enable the RYA inspector to subsequently submit an AALS report following the inspection of a provider who is both licensed and accredited by the RYA. This report can then be the basis for renewing the provider's Licence. (This process is allowed within AALR, specifically regulations 12 (1) and 6 (2)).
- 9.4 During the Reporting Year two Senior Inspectors retired: John Cliffe (Senior Inspector for Wales) on 31/12/15 and Bob Telfer (Senior Inspector for Scotland) on 31/3/16. Both John and Bob had worked for the Licensing Authority/Service since its inception in 1996. Their contribution to the successful launch and ongoing operation of the scheme was considerable and much appreciated.
- 9.5 Owen Hayward was appointed Senior Inspector for Wales and commenced his employment on 2/11/15. Jane Campbell Morrison was appointed Senior Inspector for Scotland and commenced her employment on 14/3/16.

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

**Main Scheduled Inspections**

	<b>The Reporting Year</b>	<b>Prior Reporting Year</b>
<b>April</b>	79	79
<b>May</b>	97	73
<b>June</b>	91	66
<b>July</b>	98	66
<b>August</b>	44	35
<b>September</b>	31	41
<b>October</b>	25	35
<b>November</b>	26	28
<b>December</b>	19	20
<b>January</b>	30	37
<b>February</b>	49	46
<b>March</b>	45	68
<b>Totals</b>	<b>634</b>	<b>594</b>

NB:

The Reporting Year - on 1 occasion a report required 2 inspection visits spanning 2 months

Prior reporting year - on 2 occasions a report required 2 inspection visits spanning 2 months

Prior reporting year – 1 less inspection in June to figures in last annual report due to a duplicate report being identified and deleted.

**Supplementary Scheduled Inspections**

	<b>The Reporting Year</b>	<b>Prior Reporting Year</b>
<b>April</b>	16	11
<b>May</b>	20	20
<b>June</b>	18	21
<b>July</b>	34	42
<b>August</b>	29	41
<b>September</b>	25	27
<b>October</b>	18	20
<b>November</b>	11	12
<b>December</b>	5	5
<b>January</b>	10	10
<b>February</b>	2	4
<b>March</b>	14	12
<b>Totals</b>	<b>202</b>	<b>225</b>

NB: Prior reporting year – 1 less inspection in March to figures in last annual report due to a duplicate report being identified and deleted.

## Spot Check Inspections

30 spot checks were also carried out in the reporting year, compared with 33 during the prior reporting year.

The total number of inspections under the AALR therefore, was 866 in the reporting year, compared with 852 in the prior reporting year.

The total number of inspections for the prior reporting year has been revised from 854 to 852 due to 2 duplicate reports being identified and deleted.

## Number and Type of Inspections carried out from 2009/10 to 2015/16

<b>Report Type</b>	<b>2009/10</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Main	636	623	648	629	664	594	634
Supplementary	279	280	237	167	163	225	202
Spot check	42	57	44	40	46	33	30
<b>TOTAL</b>	<b>957</b>	<b>960</b>	<b>929</b>	<b>836</b>	<b>873</b>	<b>852</b>	<b>866</b>

## **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 or revoking	23
Adequate remedial action achieved	18
Total number of refused licences	3
Total number of revoked licences	0
Total number of varied licences	2

Of these 23 cases, inspections had identified failings relating to:

Staff records of competence	17
Written procedures (establishment and review)	12
Induction and monitoring of staff and activities	2
Appointment & use of Technical Advisor	9
Accident investigation & recording procedures	2
Continued failure to arrange activity inspection (1 provider with 2 centres)	2
Staffing arrangements	8
Equipment checking & repair/replace	6
Failure to train or use qualified staff for activities	4
Overall culture of safety	1
<b>Total</b>	<b>63</b>

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**

	10/11	11/12	12/13	13/14	14/15	15/16
<b>Total of providers who, at least initially, did not meet the requirements of AALR</b>	13	6	12	9	19	23
<b>Number of considerations rescinded</b>	10	5	8	7	14	18
<b>Number of Licences Refused</b>	1	0	3	2	2	3
<b>Number of Licences Revoked</b>	2	1	1	0	3	0
<b>Number of Licences Varied</b>	0	0	0	0	0	2

### **Annex 3: Complaints**

16 complaints were received by AALS in the reporting year.

#### **Complaints were made by:**

Member of the Public (including parents)	5
Ex employee / ex apprentice	4
Other provider / freelance instructor	3
Public Body	2
Former Technical Advisor	1
Anonymous	1
<b>Total</b>	<b>16</b>

Of these:

Licence holders where complaints related to matters in scope of the AALR	7
Licence holders where complaints related to matters <b>not</b> in scope of the AALR	5
Non licence holders	4
<b>Total</b>	<b>16</b>

Action taken in respect of all complaints:

Arranged visit	6
Matter resolved by some other means (e.g. telephone call, e mail)	5
Issues addressed at next scheduled inspection	2
Referred to enforcing authority	2
No investigation possible – no details given by anonymous complainant	1
<b>Total</b>	<b>16</b>

Of the 12 relevant complaints against licence holders, the allegations concerned:

In scope of AALR:

- Provider's attitude towards safety, senior staff not listening to instructor's concerns
- Stand Up Paddleboarding session during which 4 of the group were blown a short distance from the rest of the group
- No evidence of instructor competence
- Unsafe Canadian canoe trip
- Licensed provider using unqualified instructors (anonymous complaint, centre not identified)
- Apprentice who didn't receive formal induction and was expected to lead sessions she wasn't comfortable with doing
- Staff competence
- Unqualified staff leading climbing sessions, climbing wall not being industry tested and belaying method used by centre owner.

Complaints not in scope of AALR:

- Unsupervised tree climbing, intrusive ropes course and smoke from camp fire
- Archery sessions taking place close to a public footpath
- A licensed provider allegedly causing a road traffic accident after a week's activities
- The standard of ropes being used on an indoor climbing wall.

Of these 12 cases involving licensed providers:

The complaint was deemed to have been justified in the case of unqualified staff leading climbing sessions, the climbing wall not being industry tested and the belaying method being used by the centre owner. An inspection was carried out at the centre that resulted in a Minded to Revoke notice being issued. The provider subsequently took action, the Notice was rescinded and their licence continued.

7 were deemed to have been justified in part:

- No evidence of instructor competence
- Unsafe Canadian canoe trip
- Apprentice who didn't receive formal induction and was expected to lead sessions she wasn't comfortable with doing
- Staff competence
- Archery sessions taking place close to a public footpath
- The standard of ropes being used on an indoor climbing wall
- Stand Up Paddleboarding session during which 4 of the group were blown a short distance from the rest of the group

2 were deemed to have been unsubstantiated:

- Licensed provider using unqualified instructors (anonymous complaint, centre not identified)
- Provider's attitude towards safety, senior staff not listening to instructor's concerns

2 were deemed to have been not justified:

- Unsupervised tree climbing, intrusive ropes course and smoke from camp fire
- A licensed provider allegedly causing a road traffic accident after a week's activities

Of the 2 complaints referred to the relevant Enforcing Authority.

- An AALS Senior Inspector accompanied a local authority Environmental Health Officer on a visit to an unlicensed provider who it was alleged was taking groups into terrain they are not qualified to lead in, using buoyancy aids that are not fit for purpose and not ensuring that each young person was accompanied by their own parent or legal guardian. The complaint was found to be unsubstantiated.

- A member of the public complained that her son had hurt the side of his face on an indoor climbing wall due to not wearing a helmet. She also alleged that staff left the session and those that remained were not providing tuition or support. The e mail sent to the enforcing local authority was also copied to the provider. The local authority did not reply but the provider responded to advise that he would follow up on the issues raised.

**Annex 4: Text of Standard Unlicensed Provider Letter**

Dear

**RE: ADVENTURE ACTIVITIES LICENSING REGULATIONS 2004**

We understand that you may be offering outdoor activities to young people under the age of 18 years and we cannot find you on our database as a Licence Holder under the above regulations. If you are providing either caving, climbing, trekking, or watersports activities to young people in return for payment, then it is possible that the above Regulations apply to you. If this is the case then to offer these activities legally you would need to hold a Licence.

The Adventure Activities Licensing Scheme was introduced by the Government in 1996 to inspect safety management systems and to issue licences to those operating within scope of these Regulations.

Enclosed is an extract from the Health and Safety Executive (HSE) guidance publication which details those activities which come within scope of the Adventure Activities Licensing. It also explains who is exempt from the requirement to hold a licence.

If you have any doubts about whether or not the law applies to your operation then you can contact us and we will endeavour to help you.

If, either you are not making any provision to young persons or you believe these Regulations do not apply to you, we would ask you to confirm this to us **in writing**, stating the reasons for your exemption. If these Regulations do apply you can apply online at: <http://www.hse.gov.uk/aala/apply-for-a-licence.htm>.

Alternatively we can send you an application form.

Thank you, in anticipation of your co-operation.

Yours faithfully,

MARCUS BAILIE  
Head of Inspection, AALS

## **Annex 5 – Work with Other Agencies**

- 1) Following a request from the Royal Air Force (RAF), two Senior Inspectors carried out an external audit inspection on the safety of activity provision at a Development Training Centre in Scotland and wrote a report.
- 2) Assistance requested by an Environmental Health Officer (EHO) investigating an accident on a rope bridge at a licensed centre. A Senior Inspector had a meeting with the EHO and carried out a joint visit to the licensed centre.
- 3) Assistance requested by an EHO investigating a complaint about a non-licensed centre. A Senior Inspector carried out a joint visit with the EHO and wrote a report.
- 4) Following a request from a Scottish Government funded public body, a Senior Inspector carried out a management visit and an activity inspection and wrote a report. The purpose of the inspection was to provide an external audit of the work undertaken under its 'Working with Children/Working with Public Out of Doors' safety management arrangements, specifically with reference to the Adventure Activities Licensing Regulations.
- 5) Following a request from the Royal Air Force (RAF), an Inspector carried out an external audit inspection on the safety of activity provision at a Development Training Centre in Bavaria, Germany and wrote a report.
- 6) AALS assistance was requested by a local authority to investigate an assault course incident at a non-licensed centre. The Head of Inspection carried out a joint visit to the centre with an EHO.
- 7) A provider with several licensed (and non-licensed) centres contacted AALS to request a specific review, in addition to and separate from licensing inspections, of their framework for the training, assessing and monitoring of instructors to conduct off-ground activities. A Senior Inspector liaised with the provider, carried out a 2 day inspection visit and wrote a report.
- 8) The licensed provider in 7) above contacted AALS again to request a further review of off ground instructor training and assessment. A freelance inspector carried out a 2 day inspection visit and wrote a report.
- 9) AALS has received a request from the Ministry of Defence (MoD) to carry out inspections of the safety management systems for Adventurous Training (AT) within the Armed Forces and Cadet Forces and compare these with the requirements of the Adventure Activities Licensing Regulations (AALR). An initial pilot of up to 40+ inspections of different units is envisaged. The Head of Inspection and a Senior Inspector carried out an inspection at the headquarters in Capel Curig, Snowdonia National Park as a pre-pilot in order to establish the most appropriate approach to take for the remaining inspections.

Work from Previous Reporting Years

- 10) Assistance previously requested by EHO investigating a zip wire incident at a licensed centre. During the Reporting Year a Senior Inspector attended a meeting between the provider and the EHO and the Head of Inspection liaised with solicitors regarding the prosecution of the centre by the Local Authority.
- 11) Assistance previously requested by EHO investigating an adult fatality on a kayaking session. During the Reporting Year a Senior Inspector wrote an expert witness report and attended meetings with the EHO and barrister and with the QC.
- 12) Assistance previously requested by EHO investigating an accident at a licensed centre on a newly opened zip wire involving an adult. During the Reporting Year a Senior Inspector has been involved in discussions with the EHO in preparation for court action.