

To: Business Committee

From: Jane Davidson AM,
Minister for Education, Lifelong Learning and Skills

EXPLANATORY MEMORANDUM

HEALTH AND SAFETY

THE ADVENTURE ACTIVITIES LICENSING (AMENDMENT) REGULATIONS 2007

These Regulations amend regulation 12(1) of the Adventure Activities Licensing Regulations 2004 for England, Wales and Scotland. They will enable the Adventure Activities Licensing Authority (AALA – the licensing authority) to authorise suitably qualified or experienced persons who are not its officers or employees to exercise certain functions, including signing licences, on its behalf.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Adventure Activities Licensing (Amendment) Regulations 2007, in accordance with Standing Order 25 section 3.
2. A copy of the Instrument is submitted with this Memorandum.

Enabling Power

3. The powers enabling this Instrument to be made are contained in section 1(4)(i) and 3(2)(a) of the Activity Centres (Young Person's Safety) Act 1995. The functions of the Secretary of State under section 1 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions Order 1999 (SI 1999/672)). As the National Assembly for Wales and the Secretary of State for Education and Skills propose to designate the same body as the AALA, it is practicable for the Instrument to be made by the National Assembly together with the Secretary of State, under Standing Order 25 section 3. Functions under the Activity Centres (Young Person's Safety) Act 1995 have been delegated to my portfolio as Minister for Education, Lifelong Learning and Skills, under section 62 of the Government of Wales Act 1998. Under the post 2007 arrangements we foresee that this legislation will follow the Negative procedure.

Effect

4. The functions of the AALA are prescribed in the Adventure Activities Licensing Regulations 2004. It is proposed to designate the Health and Safety Executive (HSE) as the AALA in place of Tourism Quality Services (TQS) Ltd, the current AALA. An Instrument making that designation – The Adventure Activities (Licensing) (Designation) Order 2007 - is the subject of separate legislation and is proceeding in tandem with these Regulations.

5. The Health and Safety Executive (HSE), as the Adventure Activities Licensing Authority (AALA), intends to contract back the functions of the licensing authority to Tourism Quality Services (TQS) Ltd because it does not have the resources or necessary skilled personnel to undertake the work. The arrangement has the advantage of minimising disruption to inspection and licensing activities.
6. Under regulation 12(1)(a) of the 2004 Regulations, the licensing authority may authorise suitably qualified and experienced persons who are not its officers or employees to be inspectors. However, regulation 12(1)(b) stipulates that persons who exercise other functions, including signing licences, must be officers or employees of the licensing authority.
7. The proposed amendment to the Adventure Activities Licensing Regulations 2004 removes that restriction, enabling the HSE, once designated as the AALA, to authorise TQS Ltd to undertake all the functions of the licensing authority on its behalf. The HSE is putting arrangements in place to monitor the work done by TQS Ltd on its behalf to ensure that it is up to the HSE's standards.

Target Implementation

8. It is intended that the proposed Instrument be made on 13 February 2007 and for it to be laid before Parliament in order to come into force on 1 April 2007. If these dates are not met, the HSE will be unable to contract out the full range of licensing authority functions once designated as the AALA, which could have adverse practical implications for licence applicants and, in turn, for the provision of adventure activities to the under-18s.

Financial Implications

9. There are no financial implications for the Assembly or others as a result of implementing these Regulations.

Regulatory Appraisal

10. As this Instrument falls outside the definition of Assembly general subordinate legislation in section 58 of the Government of Wales Act 1998 a Regulatory Appraisal is not required to be undertaken

Consultation

With Stakeholders

11. The Health and Safety Commission (HSC) was consulted about these Regulations, as required under section 3(3) of the Activity Centres (Young Persons' Safety) Act 1995.

With Subject Committee

12. These Regulations were first notified to the Education, Lifelong Learning and Skills Committee via the list of forthcoming legislation on 22 November 2006 (ELLS(2)-15-06 (p2) Item No. ELL 34-06) and has

remained on the list ever since. They were not identified for detailed scrutiny.

Recommended Procedure

13. Subject to the views of the Business Committee, I recommend that these Regulations proceed to Plenary under Standard procedure to give Assembly Members the opportunity to debate them.

Compliance

14. The proposed legislation will (as far as is applicable);

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community Law (section 106);
- be compatible with the Assembly's human rights legislation (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

15. The information in this Memorandum has been cleared with the Legal Services Department.

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MINISTER FOR EDUCATION, LIFELONG LEARNING AND SKILLS

JANUARY 2007