

Final Regulatory Impact Assessment (RIA) for the proposed Adventure Activities Licensing Regulations 2004

Purpose and intended effect of measure

Objective

1. The purpose of the proposed regulations is to increase the efficiency of the scheme, maintain the balance of costs between the tax-payer and the industry and also, in some respects, to lighten the burden of the Adventure Activities Licensing regime on about 1,000 businesses and public bodies in the adventure sector who hold licences. This will be done whilst continuing to ensure good safety management in the sector by means of an inspection regime that is transparent, accountable, targeted, consistent, proportionate and robust. In this way the Department continues to promote young people's education and development through adventure activity. The proposed regulations are a consequence of the second triennial review of the Licensing Regime held in 2003. This consisted of one major three-month consultation in 2003 and a second-stage consultation in February/March 2004.

2. The Secretary of State must make regulations by the Activity Centres (Young Persons' Safety) Act 1995 and did so in 1996. The proposed Adventure Activities Licensing Regulations 2004 revoke and replace the existing Adventure Activities Licensing Regulations 1996. On balance, the Department considers that proposing new regulations will be clearer than amending the existing regulations.

3. The improvements will be small and subtle, but crucial. An addendum to the existing guidance to the Licensing Authority will indicate and explain the differences between the existing regulations and the ones set out in this assessment. The addendum will also include a number of issues which the Department prefers to address other than by classic regulation.

Background

4. The Adventure Activities Licensing Authority (AALA) inspects and licences a range of commercial and other bodies providing climbing, caving, trekking and non-powered watersports to under-18 year olds.

5. The purpose of the existing Regulations is to require the AALA to inspect facilities and renew (or refuse) a licence within 3 months of receiving any renewal application made in the approved form and manner. Normally, the AALA has to complete all the associated tasks within the peak 6-month spring and summer period, because of market demand. Meeting this demand has become difficult. Although the AALA makes use of qualified seasonal inspectors, it has become increasingly difficult and expensive to complete all its inspections within the statutory time. If the AALA does not inspect, report and issue a decision within three months the provider may then continue to

trade under the old licence. The new regulations will remedy this and lift the burden of uncertainty.

6. The outcomes of the first triennial review of the 1996 regulations saw a need to lighten the burden on small providers, and to improve the operation of the licensing regime. The second review of the 1996 regulations has had similar results.

7. The proposed regulations will improve matters, mainly, by the simple measure of separating inspection from renewal. The AALA will be able to inspect a provider's facilities at any reasonable time during the 12 months prior to licence expiry. As a consequence, when the provider applies to renew his or her licence, the AALA will be able to consider the report derived from any inspection it has made during the previous year. Thus, the AALA will be able to disperse its statutory inspections across a whole year rather than 3 months. It will be better placed to inspect activities when they are occurring (one of the problems has been that activities such as sailing are not always taking place when the AALA can make one of its inspectors available to inspect). This also enables inspections to be timetabled more flexibly and not as a matter of urgency - when some staff may be unavailable or the provider is busy with customers.

8. The proposed regulations will also raise fees in line with inflation, in order to keep a balance between costs falling on licensees and their customers, and costs falling on general tax-payers who subsidise each licence through the DfES grant-in-aid to AALA. This is the first fee increase since 1996. The average annual cost to businesses remains less than when licensing started, because many more licensees now have 2 or 3-year licences. In particular, most of the smallest providers now get 3-year licences. Length of licence is largely dependent upon the size and complexity of the operation and determined by the AALA, using criteria based on guidance from the Health and Safety Executive (HSE).

9. Given the need to make these regulatory changes, the Department is taking the opportunity to make some less important, but operationally desirable, revisions to the regulatory regime. For example: allowing electronic communication and requiring the AALA to report to the Government as well as HSC.

10. Education and recreation are broadly devolved to the Devolved Administrations. The legislation relating to cross-border public authorities, such as the Adventure Activities Licensing Authority (AALA), empowers DfES to lay the new regulations also for Scotland. We understand that the National Assembly for Wales' Minister is likely to propose that the Assembly use the same document, in parallel, to make regulations for Wales.

Risk assessment

11. The AALA has told DfES that it may be able to continue operating for another year under the current regime but that, as applications increase, the

inflexible timing period for inspections under the current regulatory regime would almost certainly become much harder and more expensive for the reasons given above.

12. The fact that the Government in past years had not increased licence fees in line with inflation, combined with the staffing costs associated with the limited opportunities for inspections, was causing a growing risk of substantial rises in subsidy by general tax-payers of the cost of licensing.

Options

13. Consideration is focused on three options which represent the broad range:

Option 1: Do nothing.

Option 2: revoke 1995 Act and Introduce a Code of Practice.

Option 3: Replace the existing regulations with the proposed regulations.

Costs and benefits

Costs

Option 1

14. The rising costs of AALA staffing caused by the short period for inspection could fall partly on general tax-payers and partly on businesses and their customers. These costs on their own would probably lead the Government to propose amending the existing regulations to the tune of an average £150 per licence over the next couple of years. An unreformed licensing regime could start to fall into disrepute, leading to some loss of trade for businesses. Failure to keep fee levels in line with inflation would lead to an increased annual cost to general taxpayers in the region of £150,000 by 2005-06, rising thereafter.

Option 2

15. If the Act were revoked now without any other action, the industry could suffer a dip in business due to customer uncertainty about safety standards (similar to the drop in demand for adventure activities following the Lyme Bay tragedy). A 5% loss of business could cost £2,500-£5,000 for a notional medium-sized licensee with a £50-100,000 turnover. Revoking the Act would mean terminating the appointment of the licensing Authority and it dismissing its staff, with one-off costs to general tax-payers of winding up, redundancies, and possible repayment of fees to licensees whose licences had substantial periods to run, estimated at £400,000. Creating, distributing and publicising a new code of practice could cost general tax-payers up to £200,000. There

was minimal support for self-regulation in the 2003 public consultation. Nonetheless, in the longer term, the potential of any satisfactory complementary non-mandatory scheme (using a code or codes of practice) that the outdoor sector might establish could be considered by the Department in its future reviews of the statutory regime.

Option 3

16. Under the existing regulatory regime, the original cost of licence fees from 1997 was £200 on application, with £200 for inspection plus £30 per hour on site. This amounted to an average of £520 per licence when the scheme began in 1996-97.

17. The proposed regulations will carry a total licence fee of £620 payable on initial application or renewal application, but, as many licence holders have 2 or 3 year licences, their annual costs will be much lower.

18. The proposals introduce the first increase in fees under the Adventure Activities Licensing Regime in 8 years, whilst the Government continues to subsidise the cost instead of recovering the full cost of the scheme from licensees – currently this would cost £850-900 per provider per year.

19. The proposed increase in fees is broadly in line with the rate of inflation over the same period. Essentially, the Government's decision to hold the licensing fee at 1996 levels for nearly 8 years has constituted a gradual shifting of the balance of costs from businesses and their customers to general tax-payers. Of course, the erosion by inflation of the real-terms level of fees means that there is a cash difference between the fee that a provider paid at their last renewal, and the proposed new fee.

20. The administrative costs to AALA and to businesses of actually making the change-over from one set of regulations to the other will be minimal. Businesses still apply for an initial licence or a renewal, and undergo inspection, as before.

Benefits

Option 1

21. If fees were not raised to keep pace with inflation, then businesses would benefit from a growing subsidy, by the general tax-payer, as fee levels fell further behind inflation. However, if we did not act to reform the timing of inspections, this subsidy could be largely cancelled out by the need to increase fees due to the rising costs of staffing mentioned above,

Option 2

22. Businesses would have an opportunity to show that they could run a self-regulatory regime as effectively and efficiently as the current statutory regime. This would require a high degree of cooperation by a disparate industry, and a

high level of corporate social responsibility to devote enough resources to industry-financed yet independently-governed inspection in order to guarantee the robustness of the Code. A Code of Practice could extend more widely across activities; could bring more bodies into scope and could apply to visits overseas.

Option 3

23. More licence holders will be able to undergo all their inspections at more convenient times, often in a single day, as the pressure to complete an inspection before a licence expires (or before the required 3 months lapses) will be removed.

24. The bureaucracy of 2 separate charges being made (initial payment and inspection charge) within a short space of time will be streamlined into one charge which covers any initial/renewal fee, any inspection fees and includes the necessary time an inspector is on-site.

25. No charging for renewal inspections will take place until the licence holder applies to renew their licence.

26. Assurances of safety will be continued, as the AALA will be able to inspect across the year at a regulated time that is more convenient to the provider.

27. Consultation respondents can see that the majority view in favour of keeping licensing has been instrumental in its continuation, and that the proposed regulatory changes will enable those wishes to be carried out by ensuring that licensing continues to be viable in practice.

28. Licensees will be able to continue to benefit from holding a licence. Dozens of non-licensable bodies have (unsuccessfully) sought a licence in the last year because of their wish for external expert opinion, verification of good safety management and the market value of the AALA logo.

Business sectors affected

29. Commercial Outdoor Education Centres (licensable) – 430 (44%)

Local Authority Outdoor Education Centres (licensable) - there are about 319 (32%) LEA licence holders, but often these will be peripatetic providers or small operational centres.

Charitable Trust Outdoor Education Centres (licensable) – 190 (19%)

Sole Providers of Adventure Activities – 33 (3%)

Others (including a few schools) – 20 (2%)

Adventure Activities Licensing Authority (TQS Ltd)

The AALA estimates that about 95% of licence holders have significantly fewer than 50 employees, and would be classed as small businesses. The remaining 5% of companies hold licences for very small aspects of their overall business.

Equity and fairness

30. The Department believes that the proposals maintain the current equity and fairness of the scheme, which has won wide acceptance. The Department invited comments from stakeholders, which demonstrated a breadth of opinion across the sector.

31. The majority of the proposed changes appear to be largely uncontroversial with the exception of the fee structure and increase. There were suggestions that the flat rate fee penalises the smaller providers as their fee increase would be higher than that of larger providers who may pay more in inspection charges under the current system. However, there seemed to be some confusion as to how the new fees would work as some respondents believed that every provider would pay £620 every year for a licence. This is not accurate as the new fee applies to the licence but has no influence over its duration. In this way, the smallest providers who get one licence for three years will pay £620 for it every three years. The larger providers, with more complex operations, who get one licence for one year will pay £620 each year for it (£1860 over three years).

Small Firms' Impact Test

32. The second-stage consultation with stakeholders allowed small businesses (licence holders), amongst others, to express their views. The balance of these views is reflected below.

33. As mentioned above, the main area of concern for small firms was the proposed fee increase. The majority viewpoint seemed to be that small firms were being asked to subsidise the larger firms through the new flat rate fee. There were several proposals suggesting how the fee structure should work including: fees proportional to the number of licensable activities offered by a provider; charging poor quality providers extra; free licences for small or charitable organisations; proportional fee based on turnover or size of operation; increasing the fees of larger companies/centres; fee based on number of sessions provided to young people.

34. In mid-February the Licensing Authority sent a letter to all licence holders (approximately 1000) informing them of the proposed fee changes. Two respondents to the second stage consultation indicated that they will probably stop providing licensable activities to young people should the fee increase be implemented. Four respondents said that they would consider removing themselves from licensing and five respondents said that the fee increase

would lead to some providers not renewing their licence.

Competition assessment

35. The proposals will impact on those businesses providing adventure activities which currently hold or would be required to hold a licence under the Adventure Activities Licensing regime. The proposals will not create significant costs such as would be expected to have implications for competition and are not expected to affect entry to the market(s) or market structure. We welcomed comments from stakeholders on this conclusion. An initial competition assessment was carried out. A few respondents expressed concern that the fee increase might mean some providers would cease to operate licensable activities whilst others may not be encouraged to begin running them.

Enforcement and sanctions

36. The principle of enforcement by the HSE or by local authorities remains unchanged under the proposed regulations.

37. A minor amendment to be included will give the Secretary of State new powers in the appeal process. This becomes desirable when the AALA refuses a licence and the provider appeals to the Secretary of State. In the case of two expert witnesses presenting views that appear to be equally valid, the Secretary of State will have the power to allow an appeal subject to the application being re-considered by the AALA. Currently, the Secretary of State can only allow or dismiss the appeal.

Consultation

Within government

38. In early February 2004 draft regulations and partial RIA were sent to Cabinet Office, Better Regulation Task Force, Small Business Service, Office of Fair Trading, Health and Safety Commission, Health and Safety Executive, Scottish Executive, Welsh Assembly Government.

Comments received from these bodies have informed both the draft regulations and the full/final RIA.

Public consultation

39. The Department completed a public consultation on the future of the current regulations during 2003. The result was overwhelmingly in favour of keeping licensing for the time being, pending future decisions.

40. The partial RIA and draft regulations were issued in February 2004 as a second stage consultation seeking comments from interested stakeholders. This elicited various responses which are reflected below.

41. 32 responses to the second stage consultation were received. These included responses from individual licence holders as well as from representative bodies such as the Association of Heads of Outdoor Education Centres (AHOEC), the Outdoor Education Advisers' Panel (OEAP), the Institute of Outdoor Learning (IOL), the Central Council for Physical Recreation (CCPR), the Development Training and Employers Group (DTEG), Mountain Leader Training UK (MLTUK), the Association of Mountaineering Instructors (AMI) and the Adventure Activities Industry Advisory Committee (AAIAC). The Adventure Activities Licensing Authority (AALA) was also invited to comment on the Department's proposals.

42. Several issues arose from the second stage consultation. The main purpose of the proposed regulations was to separate inspection from renewal. This was supported by the vast majority of respondents who saw it as lightening the burden on providers by increasing flexibility, although one did express concern about the logic of relying on an inspection that took place a year before a licence was renewed. However, the AALA does not have to use that inspection to inform its decision on a licence renewal application. If it has any concerns about a provider it can inspect closer to the renewal date as well. AALA can also still carry out a spot-check on a provider at any time.

43. Whilst some respondents welcomed the clarification that canyoning was included in the regulations, others felt the definition was inappropriate and it should be left out altogether. Many respondents pointed out that the activities described are commonly referred to as 'combined water/rock' and that canyoning is only one category of activity from this group. The Department has agreed that the definition of 'combined water rock' activities will be reworked after further discussion with the industry and included, instead, in the addendum to the guidance to the licensing authority.

44. Some respondents welcomed the Department's view that any successful complementary non-statutory scheme would be considered by the Department in its future reviews of the statutory scheme. Others thought that it was too early to move towards such a scheme at the moment as there was limited industry support for it, especially if it was unsubsidised.

45. The fee increase and re-structure resulted in the most comment from respondents. A few did not remark at all on the fees issue and some were in agreement with the proposed course of action or were pleased that the Government had not increased the licence fee annually in line with inflation for the past 8 years. However, the majority of respondents were opposed to the fee increase and the new flat rate structure. There was some concern at the difference between the cost of an AALA licence and NGB accreditation, which the Government will look into in due course. A couple of respondents stated that they supported licensing but felt that it was too expensive. There was also a general assumption that the flat rate fee meant that very small providers would pay the same as large providers with a much greater turnover. This is unlikely to be the case given that the largest providers usually need to renew their licences more frequently than smaller ones.

Monitoring and review

46. In due course, the Department will consider whether any non-mandatory scheme or schemes, as trialled beside the statutory regime by the outdoor sector, could formally complement the statutory regime; and whether, in the longer term, such a non-mandatory scheme proved to be so proportionate, consistent, targeted, transparent, accountable – and robust – that it might subsume the statutory scheme.

The Department will review licence fees at appropriate intervals.

Summary and recommendation

47. In the eight years of its existence, the Adventure Activities Licensing regime, as set out in the 1996 regulations, and as provided for by the Activity Centres (Young Persons' Safety) Act 1995, has won the support of the large majority of bodies providing to schools and other groups of young people aged under 18. The proposed regulations will improve the regime by removing the constraints on inspection-timing and by bringing the licence fees into line with inflation.

48. The recommendation is that the Department proceeds with Option 3: that the existing regulations are replaced with the ones described in this assessment.

Ministerial declaration

“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs”

Signed by the responsible Minister

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Date.....

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