

To: Business Committee

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

EXPLANATORY MEMORANDUM

HEALTH AND SAFETY

THE ADVENTURE ACTIVITIES (LICENSING) (DESIGNATION) ORDER 2007

This Order designates the Health and Safety Executive (HSE) as the Adventure Activities Licensing Authority (AALA – the licensing authority), revoking the existing 1996 Order designating Tourism Quality Services (TQS) Ltd as the licensing authority. The Order applies to England, Wales and Scotland.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Adventure Activities (Licensing) (Designation) Order 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(1) 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, it is practicable for the Instrument to be made by the National Assembly together with the Secretary of State for Education and Skills, 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 purpose of this Order is to implement a recommendation made by a review commissioned by HM Treasury in the 2004 Budget to consider how to reduce administrative burdens on business.
5. The review covered the inspection and enforcement work of 63 national regulators as well as the 203 trading standards offices and 408 environmental offices in local authorities in England, Scotland and Wales. The report, "Reducing administrative burdens: effective inspection and

enforcement”, published in March 2005, recommended that a number of small regulatory authorities be subsumed into larger, national regulators. Specifically it recommended that the Adventure Activities Licensing Authority (AALA) be absorbed into the Health and Safety Executive (HSE). The recommendation was accepted by the Chancellor of the Exchequer in his March 2005 Budget statement.

6. Absorption of the AALA by the HSE is being achieved by designating the HSE as the licensing authority. This requires the existing Adventure Activities (Licensing) (Designation) Order 1996 to be revoked, and a new Order made designating the HSE in place of the existing AALA, Tourism Quality Services (TQS) Ltd. As the new licensing authority, the HSE will be responsible for inspecting and licensing commercial and other bodies providing climbing, caving, trekking and non-powered watersports to young persons aged 18 and under in accordance with the Adventure Activities Licensing Regulations 2004. The HSE intends to contract back these functions to TQS Ltd as it does not have the resources or necessary skilled personnel to do the work itself. The arrangement has the advantage of minimising disruption to inspection and licensing activities. Contracting back the functions will require a small amendment to the 2004 Regulations. A proposed Instrument to effect that amendment - The Adventure Activities (Licensing) (Amendment) Regulations 2007 – is the subject of separate legislation and is proceeding in tandem with this Order.

Target Implementation

7. 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, continuity of licensing and inspection arrangements could be affected, with adverse practical implications for licence applicants and, in turn, for the provision of adventure activities to the under-18s.

Financial Implications

8. The AALA is funded by £0.4m grant-in-aid by the Department for Education and Skills (DfES) and license fees from applicants. The effect of the Designation Order would be to confer the functions of the AALA on the HSE, which intends to contract the work back to TQS Ltd. There will be no increase in cost to the grant-in-aid budget, which will be transferred administratively to the Department for Work and Pensions (DWP) as the sponsor department of the Health and Safety Commission/Health and Safety Executive. The Assembly Government does not currently bear any of the costs of the licensing arrangements. That will continue to be the position if the new designation is approved.

Regulatory Appraisal

9. As this Order falls outside the definition of Assembly subordinate legislation in section 58(6) of the Government of Wales Act 1998, a Regulatory Appraisal is not required to be undertaken.

Consultation

With Stakeholders

10. In carrying out the review, Government Departments were consulted extensively, including the Welsh Assembly Government, as well as regulators, businesses and their representative bodies including trade associations. Nomination of the Health and Safety Executive (HSE) as the body to take on the role of the Adventure Activities Licensing Authority (AALA) was made by the Health and Safety Commission (HSC), in accordance with section 1(2) of the Activity Centres (Young Person's Safety) Act 1995. The nomination was accepted by the Assembly Government and the Department for Education and Skills, the latter having consulted the Scottish Executive.

With Subject Committee

11. The Instrument was first notified to the Education, Lifelong Learning and Skills Committee via the list of forthcoming legislation provided on 7 June 2006 (ELLS(2)-09-06 (p.2) Item No. ELL 14-06) and has remained on the list ever since. It was not identified for detailed scrutiny.

Recommended procedure

12. Subject to the views of the Business Committee, I recommend that this Order proceed to Plenary under Standard procedure to give Assembly Members an opportunity to debate it.

Compliance

13. 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).

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

15. Drafting lawyer: Roz Sullivan Ext. 6873

16. Head of Division: Sylvia Lindoe Ext. 6087

17. Drafting policy official: Catherine Roberts Ext. 6066

JANE DAVIDSON AM

JANUARY 2007

MINISTER FOR EDUCATION, LIFELONG LEARNING AND SKILLS