

Consultation on developing a safety system for Adventure Activities in Scotland

January 2012

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Part A Introduction

The UK Government has decided to abolish the Adventure Activities Licensing Authority (AALA), the organisation responsible for licensing a number of adventure activities delivered to young people across the UK. **The current statutory inspection and licensing regime will be replaced in England with a voluntary system.** This follows recommendations in Lord Young's review of health and safety legislation for the UK Government "*Common Sense - Common Safety*".

Scottish Ministers appreciate that adventure activities have inherent risks, but clearly these need to be manageable. Therefore the replacement for AALA in Scotland will need to meet the needs of Scottish providers and users whilst being robust but also proportionate. In order to deliver our policy aspirations of increasing physical activity and the number of opportunities for outdoors activities, any replacement must provide confidence to users and the wider public while not creating barriers to participation. It should also enable the sharing of adventure activity good practice throughout Scotland.

This consultation paper sets out what the Scottish Government considers are possible options for creating a safe system for adventure activities in Scotland. It seeks the views of stakeholders and those with an interest in adventure activities to assist us in deciding what should be put in place to achieve what we want in Scotland.

Information about consultation in the Scottish Government, and how it forms part of the policy process, is provided in **Annex A**.

A consultation list is provided at **Annex B**.

Annex C provides information on how to respond to this consultation, how responses will be handled and the next stages of the process. When responding we ask that you complete the Respondent Information Form included in Annex C. This will ensure that your response is handled correctly.

Consultation runs from Thursday 5 January 2012 to Thursday 29 March 2012.

Part B Background

The Adventure Licensing Activities Authority was established by the Activity Centres (Young Persons' Safety) Act 1995. The Act was passed in the wake of the Lyme Bay canoeing tragedy in March 1993, in which four young people lost their lives. The aim of AALA was to licence operators of adventure activities in the fields of caving, climbing, trekking and water sports to provide assurance to users that they are compliant with relevant health and safety legislation. But AALA also ensured providers were following good safety management practices so that young people can experience exciting and stimulating activities outdoors, while not being exposed to avoidable risks of death and disabling injury.

The Health and Safety Executive (HSE) was designated as the Adventure Licensing Activities Authority with effect from 1 April 2007. HSE contracted with Tourism Quality Services Ltd to administer the scheme across England, Scotland and Wales, carry out inspections and issue licences on HSE's behalf. TQS trades as the Adventure Activity Licensing Service (AALS) for this purpose, employing a staff of six inspectors, one of whom works in Scotland. There is an additional pool of freelance inspectors who assist with peaks of work as required.

Although there has been no criminal charges brought in relation to the Activity Centres (Young Persons' Safety) Act 1995, many providers cite the inspection regime as helpful in providing a critical review of their activities and the sharing of best practice. To date the Health and Safety at Work Act 1974 has been the statutory instrument used to bring pursue criminal negligence within the sector.

The scope of adventure activities licensing

The 1995 Act and the Adventure Activities Licensing Regulations 2004, require providers of adventure activities for young people under the age of 18 to hold a licence. Licensing requirements, however, only apply to those organisations which provide activities in return for payment. A licence is required where schools or colleges provide activities to pupils of another educational establishment or to other members of the public, in return for payment. Activity centres, field study centres and the like which are run by education authorities or departments are also required to have a licence.

Voluntary associations which provide activities only for their members or members of other voluntary associations do not require a licence and neither do schools and

colleges which only provide activities for their pupils or students. Additionally, activities where young people are accompanied by a parent or legally appointed guardian are outside of the scope of licensing.

The following activity types are presently within scope of the AALA licensing scheme:

- **Caving** - underground exploration in natural caves and mines including potholing, cave diving and mine exploration, but not in those principally used as show-places open to the public;
- **Climbing** - rock climbing, traversing, abseiling and scrambling activities except on purpose-designed climbing walls or abseiling towers;
- **Trekking** - hill walking, running, pony trekking, mountain biking, off-piste skiing and related activities when done in moor- or mountain-country above 600 metres and which is remote, i.e. over 30 minutes travelling time from the nearest road or refuge; and
- **Watersports** - (canoeing, rafting, sailing and related activities) when done on the sea, tidal waters or larger non-placid inland waters.

The current licensing regime does not cover certain activity areas such as skiing (other than off-piste), although clearly there is an opportunity to consider the scope of any new arrangement.

Adventure Activities Licensing: sports governing body accreditation schemes

At present there are a number of accreditation schemes run by National Governing Bodies (NGBs) which accredit providers of adventurous activities and have an inspection element.

Statutory duties on the sector in relation to Health & Safety

Amongst the HSE's functions is the protection of persons not at work against risks to health and safety arising from work activities. The removal of the licensing requirements would not affect the existing statutory duties in relation to health and safety in work settings under the Health and Safety at Work Act 1974 and the

Management of Health and Safety at Work Regulations 1999. The HSE consider that the protection given by legislation is sufficient for what they consider to be a low-risk sector.

AALA has very limited powers that are confined to the investigation of complaints regarding licensable matters and to the revocation or refusal of a licence. AALA cannot take any enforcement action such as issuing notices nor can they investigate accidents, this is a function of the enforcing authorities. Enforcement is split between HSE and Local Authority Environmental Health Departments.

Therefore the Health and Safety at Work Act will continue to apply and any non-compliance with the act or the Management Regulations will be investigated by the HSE accordingly. This approach is in line with the majority of other areas of employment and service providers.

Scottish Parliamentary consent

Although the current Activity Centres (Young Persons' Safety) Act 1995 is UK wide legislation, the Scottish Government is of the view that the subject matter of the 1995 Act involves both devolved and reserved matters. Therefore, in order to be repealed, Scottish Parliament must be given the opportunity to provide its consent. The legislative mechanism used is the Legislative Consent Motion. There is therefore the ability for Scotland to develop our own solution if we were minded to do so.

Options

The Scottish Government recognises that the Activity centres (Young Persons' Safety) Act 1995 was introduced as a reaction to a specific tragedy. The majority of providers within Scotland have come to welcome the licensing environment and in particular the inspection and registration system. Abolishing the licensing regime will require a change to the legislation that provides for its establishment, the Activity Centres (Young Persons' Safety) Act 1995 and the Adventure Activities Licensing Regulations 2004. This presents us with an opportunity to consider what would best suit Scottish needs.

Although it is becoming clear in England that there will be no statutory body to ensure compliance, there will likely be a Code of Practice developed which will summarise all of the duties placed on providers of adventure activities. Given it is for Scottish Ministers to determine what should replace AALA in Scotland, we would welcome your views on the following options:-

Option 1 – Adopt the model being proposed in England

This option would see the current licensing regime replaced with a voluntary Code of Practice which HSE would monitor and oversee. The Code would be a statement of high level principles which activity providers can sign up to and agree. Activity

providers will still be subject to criminal sanctions under the Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1999 in exactly the same way as they are at present and will still be subject to inspection under the Act by the enforcing authorities.

HSE has established a Working Group (on which there is Scottish representation) to consider these new arrangements and they are exploring the possibility of the sector developing a register of providers hosted by the Adventure Activities Industry Advisory Committee in partnership with other sector bodies. While still under consideration, proposals include recording those self declaring against the Code and those who had undergone accreditation via another route such as existing National Governing Body (NGB) or other voluntary sector run schemes. This could provide a one stop shop for providers and users identifying those who are self – declared as compliant with the new Code and those who have gone further and been independently accredited/inspected. This could encompass providers offering activities beyond those currently covered by the existing licensing regime (caving, trekking, water sports and climbing) and for all age groups rather than just young people. The HSE would continue to utilise the Health and Safety at Work Act as the primary statutory tool to hold providers to account.

Pros

- Has the opportunity to replicate the Code of Practice being implemented in England and would deliver a GB wide solution.
- A Code of Practice could define good practice
- It may encourage new entrants to the adventure activity market by removing costs of licensing, especially to small companies
- Complements rather than adding to existing Health and Safety legislation (Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1999) which contain the duties and powers to regulate adventure activities providers

Cons

- A Code of Practice provides limited assurance of good practice
- Could lack rigour and credibility with users and the wider public
- Voluntary nature of complying with the Code could lead to misuse
- Lack of inspections limits opportunity to share good practice
- Some users (such as local authorities) may still wish to inspect and assess providers.

Option 2 - Non-Statutory Scheme

A non-statutory safety accreditation scheme would be voluntary. Although it could include an element of inspection and accreditation of providers to give an element of assurance to users. This would cover the generic standards of good safety practice that providers must meet in order to be accredited. There would be a need to identify, and regularly review the scope of the scheme: in other words, decide for what activities, and at what level, accreditation is both relevant and possible.

The Scottish Government and public bodies role would be limited to promoting and encouraging compliance. This is the model that operates in Northern Ireland. There are a number of these schemes in place that sit alongside non-statutory inspection and accreditation schemes such as those offered by National Governing Bodies of Sport.

Pros

- Promotes the sharing of good practice
- An independent inspection may be welcomed by many Scottish providers
- Provides an element of reassurance to users and wider public that standards remain high
- Is not 'imposed' but rather is developed and delivered by the sector for the sector
- Could incentivise involvement rather than through legislation.
- Potentially reduces the administrative burden on users seeking to risk assess providers
- Opportunity to develop a scheme specific to Scotland to meet the specific needs of the industry

Cons

- Requires buy-in by providers and users
- May require significant marketing to establish it as the required standard for providers
- Different arrangements would exist within GB.

Option 3 - Statutory Scheme

The power of a statutory measure is that providers coming within the scope of any legislation must comply with it. However, such a measure would likely only take place if there was recognition that there was sufficient risks associated which required a statutory intervention.

It would be possible to introduce a replacement statutory regime which may include licensing in Scotland for adventure activities, although there would be an opportunity to consider the scope of activities it covered. It is unlikely that any such regime would be administered by HSE and an appropriate defined body would have to be identified. Given the current public finance position it is possible that any scheme would have to contain a large element of self funding.

Pros

- Opportunity to define the scope to ensure all providers are covered
- Does not depend on voluntary 'buy in' from providers
- Potential for high degree of rigour and credibility
- Builds on the perceived success of AALA including the inspection regime
- Potentially reduces the administrative burden on users seeking to risk assess providers
- Encourages the sharing of good practice, particularly by inspectors who also report on lessons learned

Cons

Appendix 1

- There may be significant associated costs
- Significantly different arrangements would exist within GB with providers in Scotland bearing additional costs and being held to different standards than their competitors in England and Wales.
- The development of legislation and implementation may take some time to develop

Annex A

The Scottish Government Consultation Process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: [Scottish Government consultations](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex B

Summary Consultation List

Scottish Local Authorities

Convention of Scottish Local Authorities (COSLA).

Scottish Adventure Activities Forum

Scottish Sports Association

Sportscotland

Scottish Advisory Panel for Outdoor Education

Education Scotland

Skills Active

Responding to the consultation

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

Consultation commenced on Thursday 5 January 2012 and will run for 12 weeks. We would ask that responses are received by Thursday 29 March 2012. **Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:**

adventureactivities@scotland.gsi.gov.uk

or

Sport and Physical Activity Team
The Scottish Government
3 - East
St Andrews House
Edinburgh
EH1 3DG

If you have any queries contact Douglas Armstrong on 0131 244 2712

For information, The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** which forms part of the consultation questionnaire as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Publishing Responses

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library **Scottish Government Library, K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD**.(see the attached Respondent Information Form), within 6 weeks of the close of the consultation. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service. Responses will also be made available online.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on what the future arrangements should be for the replacement of AALA in Scotland.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to: Douglas Armstrong

Consultation on developing a safety system for Adventure Activities in Scotland

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions - I am responding as...

Individual <input type="checkbox"/>	/	Group/Organisation <input type="checkbox"/>
<i>Please tick as appropriate</i>		

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

Consultation Questions

We would be grateful for your views on any aspects of the proposals outlined in the consultation paper. In particular, we are keen to seek feedback on the following questions:

1. What impact would the removal of AALA have on your organisation / members?

Comments:

2. How should providers, users and the wider public be assured of quality and safety within the Adventure industry?

Comments:

3. What do you consider are the benefits to users and providers of developing a mechanism for regulating (be that voluntary or statutory) adventure activities in Scotland?

Comments:

4. Do you consider that there are any constraints that are pertinent to Scotland?

Comments:

5. If Scotland was to adopt a different option to England do you consider this will present any benefits or difficulties for users and providers in Scotland?

Comments:

6. What role should the industry sector and other bodies play in monitoring and supporting any regime in Scotland?

Comments:

7. What activities should be included in any mechanism that replaces AALA?

Comments:

8. Are there any challenges or opportunities of developing a different model and approach to the rest of the UK

Comments:

9. Following the removal of the Adventure Activities Licensing regime in England what is your preferred option for Scotland?

Options	Preference
1 - Voluntary Code of Practice as being developed in England	
2 - Non-Statutory accreditation scheme	
3 - Statutory licensing scheme	
4 - Other	

10. Please provide the reasons for your answer. If 'Other', please explain the option.

Comments:

11. Which option do you believe is most consistent with supporting the aspiration for increasing participation in physical activity and the number of visits to the outdoors? Please explain

Comments:

12. Which option do you believe represents the best opportunity for adventure tourism in Scotland? Please explain

Comments:

13. Do you have any other comments on the proposals outlined in the paper?

Comments: