
 STATUTORY INSTRUMENTS

2004 No. []

HEALTH AND SAFETY**The Adventure Activities Licensing Regulations 2004**

Made - - - - 2004

Laid before Parliament 2004

Coming into force - - [xx April] 2004

The Secretary of State for Education and Skills—

(1) acting in relation to England, Scotland and Wales, in exercise of the powers conferred on the Secretary of State by section 18(2) of the Health and Safety at Work etc. Act 1974(a), having consulted the Health and Safety Commission (“the Commission”) and such other bodies as appear to the Secretary of State to be appropriate in accordance with section 50(1) of that Act, and

(2) acting in relation to England and Scotland, in exercise of the powers conferred on the Secretary of State by sections 1(1), (3) and (4) and 3(2) of the Activity Centres (Young Persons’ Safety) Act 1995(b), having consulted the Commission in accordance with section 3(3) of that Act, and by section 88 of the Scotland Act 1998(c), having consulted the Scottish Ministers in accordance with that section,

and

the National Assembly for Wales, acting in relation to Wales, in exercise of the powers conferred on the Secretary of State by sections 1(1), (3) and (4) of the Activity Centres (Young Persons Safety) Act 1995 and now vested in it(d), having consulted the Commission in accordance with section 3(3) of that Act,

hereby make the following Regulations—

Citation and commencement

1. These Regulations may be cited as the Adventure Activities Licensing Regulations 2004 and shall come into force on [xx April] 2004.

(a) 1974 c.37.

(b) 1995 c.15.

(c) 1998 c.46; despite the transfer of the powers conferred by sections 1 and 4 of the 1995 Act by section 53 of the Scotland Act 1998, the powers remain exercisable by the Secretary of State in respect of a cross-border public authority by virtue of section 88 of the 1998 Act.

(d) The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2(a) and Schedule 1.

Interpretation**2.—(1) In these Regulations—**

“the 1974 Act” means the Health and Safety at Work etc. Act 1974;

“the 1995 Act” means the Activity Centres (Young Persons' Safety) Act 1995;

“accessible road” means a road which is, at the time in question, accessible to ambulances which are road-going vehicles not specially adapted for rugged terrain;

“activity centre” means an establishment which is, at the time in question, primarily used for, or as a base for, the provision of instruction or leadership in sporting, recreational or outdoor activities;

“adventure activity” means caving, climbing, trekking or watersports;

“canyoning” means combined water and climbing activity involving rock climbing or swimming or both which requires, in order to be carried out safely, the use of equipment for, or the application of special skills or techniques in, climbing or swift water rescue;

“caving” means the exploration of underground passages (other than those principally used as show-places open to the public)—

(a) in parts of mines which are no longer worked; or

(b) in natural caves where the exploration of those passages requires, in order to be carried out safely, the use of rock climbing or diving equipment or the application of special skills or techniques;

“climbing” means climbing, traversing, abseiling or scrambling over natural terrain or outdoor man-made structures (other than structures designed for such activities) which requires, in order to be carried out safely, the use of equipment for, or the application of special skills or techniques in, rock climbing or ice climbing, and includes canyoning;

“educational establishment” means an educational establishment attended by young persons except such an establishment engaged primarily in the provision of sporting, recreational or outdoor activities;

“enforcing authority” has the meaning assigned to it by section 18(7) of the 1974 Act;

“facilities for adventure activities” means any facilities which consist of, or include, some element of instruction or leadership given to one or more young persons in connection with their engagement in an adventure activity (other than instructions given solely in connection with the supply of equipment for use in such an activity);

“horse” includes pony;

“instructor” means a person giving instruction or leadership in the course of the provision of facilities for adventure activities;

“licence” means a licence granted by the licensing authority in accordance with these Regulations (whether as a renewal of a licence or otherwise);

“licence-holder” means a person to whom a licence has been granted in accordance with these Regulations;

“licensing authority” means the person for the time being designated by the Secretary of State or the National Assembly for Wales by order under section 1(1) of the 1995 Act;

“local authority” means—

(a) in relation to England, a county council, a unitary authority, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in relation to Wales, a county council or county borough council; and

(c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a);

(a) 1994 c.39.

“moorland” excludes any woodland or cultivated land;

“non-standard condition” means a condition imposed in a licence other than a condition imposed under regulation 9(1);

“refuge” means a building which would, in an emergency, provide shelter and which was, at the time in question, either occupied or provided with a telephone, or other means of communication, by which help could be summoned;

“relevant national authority” means –

- (a) in relation to England, the Secretary of State;
- (b) in relation to Scotland, [???]; and
- (c) in relation to Wales, the National Assembly for Wales;

“required fee” means (subject to regulation 20) the fee referred to in regulation 5,

“ski-ing” means sliding over snow or ice on skis, skates, sledges or similar equipment;

“specified waters” means–

- (a) the sea;
- (b) tidal waters;
- (c) inland waters at a location where any part of those waters is more than 50 metres from the nearest land excluding any island; or
- (d) inland waters where the surface of the water is made turbulent because of weirs, rapids, waterfalls or fast flowing currents;

“travelling time” means the time it would take a person to walk by the quickest safe route; and for this purpose a person shall be deemed to walk at 5 kilometres per hour and to take, in addition, one minute for every 10 metres of increase in the height above sea level of any uphill section of that route;

“trekking” means journeying on foot, horse or pedal cycle or ski-ing over terrain–

- (a) which is moorland or more than 600 metres above sea level; and
- (b) from which it would take more than 30 minutes travelling time to reach any accessible road or refuge;

but does not include ski-ing on a prepared and marked-out ski-run which is patrolled by persons engaged to assist in cases of injury;

“voluntary association” means an association, club, society, organisation or other body (whether corporate or unincorporate) which provides facilities to its members and is not a business, or part of a business, conducted for profit; and “member” in relation to such an association shall exclude a person who is made a member solely in connection with the sale to him by the association of a course of instruction;

“watersports” means the use on specified waters of–

- (a) canoes, kayaks or similar craft propelled or steered by paddles held in the hand (but excluding rowing-boats propelled or steered by oars);
- (b) rafts (including those which are inflatable or which are improvised from various materials but excluding those propelled by means of a motor or towed by a motor-boat); or
- (c) sailing boats, windsurfers, sailing dinghies or other craft whose principal means of propulsion is the wind but excluding craft the construction, equipment and use of which is subject to a requirement for a certificate issued pursuant to the Merchant Shipping Act 1995(a) or any regulation or order made thereunder;

“young persons” means persons who have not attained the age of 18.

(2) Any reference in these Regulations to varying a licence includes a reference to varying a non-standard condition attached to a licence or adding or deleting such a condition from a licence.

(a) 1995 c.21.

(3) Any reference in regulation 15 to an application for a licence is a reference to an application which the licensing authority is, by virtue of regulation 4, obliged to consider.

Persons who are required to hold a licence

3.—(1) Subject to paragraph (2) a person who provides facilities for adventure activities is required to hold a licence if that person—

- (a) provides such facilities in return for payment; or
- (b) is a local authority and provides the facilities to an educational establishment in respect of the pupils of such an establishment;

and where that person provides those facilities at or from more than one activity centre, and operates those activity centres at the same time throughout any period of 28 days or more, a separate licence shall be required in respect of the facilities provided at or from each such centre.

(2) A person is not required to hold a licence in respect of facilities for adventure activities where those facilities are provided—

- (a) by a voluntary association—
 - (i) to its members;
 - (ii) to the members of some other voluntary association pursuant to an agreement between the associations; or
 - (iii) to persons who are not its members for the purpose only of encouraging interest in its activities or attracting new members; provided that such facilities shall not be provided, in respect of any one person, on more than three days in any period of twelve months;
- (b) by an educational establishment to pupils of that establishment;
- (c) to young persons who are, during their participation in the activities in question, accompanied—
 - (i) by an individual who is their parent or guardian or who has parental responsibility for them within the meaning of the Children Act 1989(a); or
 - (ii) by an individual who has parental rights within the meaning of the Law Reform (Parent and Child) (Scotland) Act 1986(b) in respect of them or, on and after the day on which section 1 of the Children (Scotland) Act 1995(c) has come into force, has parental responsibilities for them within the meaning of that section; or
- (d) under the authority of a licence held by some other person.

Applications for licences

4. The licensing authority shall consider an application for a licence where—

- (a) the application is made in a form and manner approved by the authority;
- (b) the application is accompanied by such supporting documentation as the authority reasonably requires; and
- (c) the required fee has been paid.

Payment of fee

5. A fee of £620 shall be payable by the applicant to the licensing authority on each application for a licence or renewal of a licence.

Consideration of applications for licences

(a) 1989 c.41.
(b) 1986 c.9.
(c) 1995 c.36.

6.—(1) The licensing authority may grant or refuse a licence but, without prejudice to its discretion to refuse a licence on other grounds, the authority shall not grant a licence unless—

- (a) it is satisfied that the applicant has—
 - (i) made a suitable and sufficient assessment of the risks to the safety of the young persons and other persons who will be engaged in the adventure activities in respect of which the application is made or whose safety may be affected thereby;
 - (ii) identified the measures he needs to take in consequence of that assessment to ensure, so far as is reasonably practicable, the safety of those persons;
 - (iii) made the arrangements referred to in regulation 9(1)(a) and (b);
 - (iv) appointed competent persons to advise him on safety matters or has competence in such matters himself; and
- (b) the required fee has been paid.

(2) The licensing authority shall, before reaching a decision as to whether or not it will grant a licence, first consider a report made to the authority by a person authorised by it for that purpose pursuant to regulation 12.

(3) The report referred to in paragraph (2) shall be made only following an inspection by the person making the report and, subject to regulation 7(2), carried out after the application for the licence has been received.

(4) The inspection referred to in paragraph (3) shall be of any such places, equipment and documents as the person making the inspection thinks necessary for the purpose of enabling the licensing authority to satisfy itself on the matters referred to in paragraph (1).

Renewal of licences

7.—(1) Where the licensing authority has received an application for the renewal of a licence not less than 3 months but not more than 6 months before the expiry date of that licence, then that licence shall be regarded as continuing in force until such time as a decision is issued on that application by the authority.

(2) In the case of an application for a renewal of a licence, the licensing authority may rely, for the purposes of section 6(3), upon an inspection made in respect of the licence within a period of one year before the date on which the renewal is to commence.

Grant of licences

8. A licence granted by the licensing authority shall be in writing and shall state—

- (a) the name and address of the licence-holder;
- (b) the facilities for adventure activities which may be provided pursuant to the licence;
- (c) where the licence is issued in respect of a particular activity centre, the address of the centre concerned;
- (d) the date on which the licence will commence and the date on which the licence will expire which shall be no longer than 3 years from the date of its commencement; and
- (e) the conditions subject to which the licence has been granted.

Conditions

9.—(1) The licensing authority shall attach the following conditions to all licences—

- (a) that the licence-holder shall maintain such arrangements as are appropriate for the review of the assessment referred to in regulation 6(1)(a)(i) and for the effective implementation, control, monitoring and review of the measures referred to in regulation 6(1)(a)(ii);
- (b) that the licence-holder shall maintain suitable and sufficient arrangements—

- (i) for the appointment of a sufficient number of competent and adequately qualified instructors;
 - (ii) for the giving of safety information to instructors and participants;
 - (iii) for the provision of such equipment as is needed to ensure that the activities are carried out safely;
 - (iv) for the maintenance of that equipment in an efficient state and in good repair; and
 - (v) for the provision of first-aid, for the summoning of medical and rescue services in the event of an emergency, and for otherwise dealing with an emergency;
- (c) that the licence-holder shall ensure that he is advised by competent persons on safety matters unless he has competence in such matters himself;
- (d) that the licence-holder shall ensure that the authority is permitted to inspect at any reasonable time any place or equipment used in, or in connection with, the provision of the facilities for adventure activities to which the licence relates and any documents held by or on behalf of the licence-holder relating to such provision;
- (e) that the licence-holder shall accede to any reasonable request for information from the authority relating to the provision of such facilities;
- (f) that where such facilities are provided at or from an activity centre on two or more consecutive days, the licence-holder shall display at that centre a copy of the licence; and that where such facilities are not so provided the licence-holder shall have available for inspection, at any reasonable time, such a copy; and
- (g) that the licence-holder shall not refer to his holding of a licence, in any advertisement or information issued by him or on his behalf, unless that reference states which adventure activities are covered by the licence and gives the telephone number of the licensing authority.
- (2) The licensing authority may attach to the licence such other conditions relating to safety as it considers necessary.

Revocation or variation of licences

10.—(1) Subject to the provisions of the Schedule the licensing authority may at any time revoke or vary a licence—

- (a) on application being made to it by the licence-holder;
- (b) if there has been a contravention of any condition attached to the licence;
- (c) if any information supplied by the holder of the licence is false in any material particular;
or
- (d) if it considers such a revocation or variation necessary to ensure safety.

(2) The provisions of regulation 4(a) and (b) shall apply to an application for the variation of a licence as if the references in that regulation to an application for a licence were references to an application for the variation.

(3) Where a licence is revoked or varied pursuant to this regulation—

- (a) the licensing authority shall give notice in writing or electronic form to the licence-holder informing him of the revocation or, as the case may be, giving details of the variation; and
- (b) the licence-holder shall, if so required by the licensing authority, return the licence to the authority and the authority shall, if the licence is to be varied, reissue the licence to the licence-holder in a varied form.

Complaints

11.—(1) 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.

(2) Following the investigation of a complaint the authority shall take such action as it considers appropriate and, in particular, it may—

- (a) revoke or vary the relevant licence in accordance with regulation 10;
- (b) refer the matter to the relevant enforcing authority.

(3) Where a complaint has been investigated by the authority the authority shall advise the complainant of the result of that investigation and of any action taken by it in consequence.

Exercise of functions by authorised persons

12.—(1) The licensing authority may authorise—

- (a) suitably experienced or qualified persons (whether or not its officers or employees) to make a report pursuant to regulation 6(2) and to conduct investigations and carry out inspections pursuant to these Regulations; and
- (b) suitably experienced or qualified persons who are its officers or employees to exercise any other functions conferred on the authority pursuant to these Regulations.

(2) Any person authorised by the licensing authority to conduct investigations or carry out inspections shall be required to carry and produce on request a written authorisation from the authority stating the functions exercisable by that person and the period for which the authorisation will remain in force.

The register of licences and provision of information

13.—(1) The licensing authority shall keep, in such form as it considers appropriate, a register of licences which shall include the name and address of each licence-holder, a description of the facilities for adventure activities which may be provided pursuant to each licence and, where the licence is issued in respect of a particular activity centre, the address of the centre concerned.

(2) The licensing authority shall make the register available for public inspection without charge during reasonable office hours and shall allow copies to be taken on payment of such charge, if any, as it may reasonably require.

(3) Without prejudice to paragraph (2), the licensing authority shall provide information, without charge, to any person seeking to know whether certain named persons are licence-holders but the information which the authority is obliged to provide under this paragraph shall be limited to a request in respect of no more than five such named persons.

Requirements for notifications relating to licences

14. The Schedule (requirements for notifications to applicants and licence-holders) shall have effect.

Appeals

15.—(1) An applicant for a licence may appeal to the relevant national authority against the refusal of a licence and, subject to paragraph (2), for the purposes of this regulation a failure to issue a decision on an application within three months of the date on which the application was received by the licensing authority shall be treated as a refusal.

(2) In respect of an application for the renewal of a licence to which the provisions of regulation 7(1) apply, a failure to issue a decision within 3 months of the date of expiry of the existing licence shall be treated as a refusal.

(3) A licence-holder may appeal to the relevant national authority against—

- (a) any non-standard condition attached to a licence;
- (b) the revocation or variation of a licence; or
- (c) the refusal to vary a licence.

(4) Before the determination of an appeal the relevant national authority shall ask the appellant and the licensing authority whether they wish to appear and be heard on the appeal and—

- (a) if both of them express a wish not to appear and be heard, the appeal may be determined without a hearing of the parties;
- (b) if either of the parties expresses a wish to appear and be heard, the relevant national authority shall afford to both of them an opportunity of so doing.

(5) The Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974(a) or the Health and Safety Licensing Appeals (Hearings Procedure) (Scotland) Rules 1974(b) (as appropriate) shall apply to hearings under paragraph (4) as they apply to hearings in pursuance of section 44(3) of the 1974 Act.

(6) In determining an appeal the relevant national authority may make an order –

- (a) dismissing the appeal;
- (b) allowing the appeal; or
- (c) directing the licensing authority to reconsider any matter which is the subject of the appeal.

(7) If the relevant national authority allows the appeal it shall direct the licensing authority—

- (a) where the appeal is against refusal of a licence, to grant a licence on the conditions specified in regulation 9(1) and on such other conditions relating to safety, if any, as may be specified in the direction;
- (b) where the appeal is against any non-standard condition attached to a licence, to remove the condition or vary it in the way specified in the direction;
- (c) where the appeal is against the revocation of a licence, to reinstate the licence with such variations, if any, as may be specified in the direction; or
- (d) where the appeal is against the variation of a licence or against the refusal to vary a licence, to reinstate the licence in the form in which it was before the variation or to vary the licence in the way specified in the direction.

Offences

16.—(1) It is an offence for a person to do anything for which a licence is required to be held by him under these Regulations without a licence or otherwise than in accordance with such a licence.

(2) It is an offence for a person for the purposes of obtaining or holding a licence—

- (a) to make a statement to the licensing authority (or someone acting on its behalf) knowing it to be false in a material particular, or
- (b) recklessly to make a statement to the licensing authority (or someone acting on its behalf) which is false in a material particular.

Application of enforcement provisions of health and safety legislation

17. Sections 18 to 27, 33(1)(e) to (i), (n) and (o) and (2) to (4), 34(2) to (6), 36(1), 37 to 42 and 46 of the 1974 Act shall apply for the purposes of providing for the enforcement of these Regulations and in respect of proceedings for a contravention thereof as if—

- (a) references to relevant statutory provisions were references to those provisions applied by this regulation and to these Regulations; and

(a) S.I. 1974/2040.
(b) S.I. 1974/2068.

- (b) the reference in section 33(2) to paragraph (d) of subsection (1) were omitted.

Application of Health and Safety (Enforcing Authority) Regulations 1998

18.—(1) The Health and Safety (Enforcing Authority) Regulations 1998(a) shall, subject to paragraph (2) below, apply in respect of the enforcement of these Regulations.

(2) Where, by virtue of paragraph (1) above, a local authority is responsible for the enforcement of these Regulations in relation to premises, it shall be responsible for such enforcement in relation to the provision of facilities for adventure activities (within the meaning of these Regulations)—

- (a) at those premises; and
- (b) from those premises if the premises are, at the time in question, primarily used for, or as a base for, the provision of instruction or leadership in sporting, recreational or outdoor activities;

and references in the said Regulations of 1998 to an enforcing authority for premises shall be construed accordingly.

Annual report

19. The licensing authority shall as soon as possible after 31st March in each year prepare and submit to the Health and Safety Commission and to the relevant national authority a report on the carrying out of the functions of the authority over the period of twelve months preceding that date.

Transitional Provisions

20.—(1) The provisions of Schedule 1(Fees) to the Adventure Activities Licensing Regulations 1996 shall continue to apply in relation to an application for the renewal of a licence referred to in paragraph (2) provided that—

- (a) in respect of a licence referred to in paragraph (2)(a), any fee payable is made before the date of expiry of that licence; and
- (b) in respect of a licence referred to in paragraph (2)(b), the application for renewal is received by the licensing authority before the date of the coming into force of these Regulations.

(2) Paragraph (1) applies to—

- (a) a licence in respect of which the date of expiry falls on or after the date of the coming into force of these Regulations but on or before the date two months after the date of the coming into force of these Regulations; and
- (b) a licence in respect of which the date of expiry falls on or after the date two months after the coming into force of these Regulations but on or before the date three months after the date of the coming into force of these Regulations.

Revocation

21.—(1) The Adventure Activities Licensing Regulations 1996(b) and the Adventure Activities (Enforcing Authority and Licensing Amendment) Regulations 1996(c) are, subject to paragraph (2), hereby revoked.

(2) The Adventure Activities Licensing Regulations 1996 shall, until the date three months after the date of the coming into force of these Regulations, continue in force so far as is necessary to give effect to the provisions of regulation 20 of these Regulations.

(a) S.I. 1998/494.
(b) S.I. 1996/772.
(c) S.I. 1996/1647.

[Date] Minister of State,
Department for Education and Skills

Signed on behalf of the National Assembly for Wales

[Date] Presiding Officer

SCHEDULE

Regulation 14

Requirements for notifications to applicants and licence-holders

1. In this Schedule “relevant action” means a refusal to grant or vary a licence, the imposition of any non-standard condition on the grant of a licence or the revocation of a licence.

2.—(1) Where the licensing authority expresses to any person any opinion as to what remedial action should be taken by that person, if that person so requests, the authority—

- (a) shall as soon as practicable give to him a notice in writing or electronic form which satisfies the requirements of sub-paragraph (2) below; and
- (b) shall not take any relevant action against him until after the end of 28 days beginning with the giving of the notice.

(2) A notice satisfies the requirement of this sub-paragraph if it—

- (a) states the nature of the remedial action which in the opinion of the authority should be taken, and explains why and within what period;
- (b) in the case where the authority is of the opinion that a condition of a licence is not being complied with, explains what constitutes the failure to comply with that condition; and
- (c) states the nature of the relevant action which could be taken and states the effect of paragraph 3 below and of regulation 15 (appeals).

3. Before the licensing authority takes any relevant action against any person, the authority—

- (a) shall give to that person notice in writing or electronic form—
 - (i) that it is considering taking the action and the reasons why; and
 - (ii) that the person may, within a period specified in the notice, make in writing or electronic form representations to the authority or, if the person so requests, make oral representations to the authority; and
- (b) shall consider any representations which are duly made and not withdrawn.

4. Where the licensing authority has taken relevant action against any person the authority shall, as soon as practicable, give to that person a notice in writing or in electronic form explaining the effect of regulation 15 (appeals).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact with amendments the Adventure Activities Licensing Regulations 1996. The Regulations provide for the licensing of persons in respect of the provision of facilities for adventure activities (as defined). The Regulations apply to England, Scotland and Wales.

In addition to minor and drafting amendments, the Regulations make the following changes of substance.

The Regulations provide for the payment of a single fee on application for a licence or a renewal of a licence (*regulation 5*). The specified fee is £620. This replaces the former requirement for a basic fee of £200 on application and an additional inspection fee calculated on the basis of £200 plus a further sum up to a maximum of £1,200 based on the number of hours of inspection.

The Regulations–

- (a) clarify that canyoning is included in the definition of the definition of “adventure activity” (*regulation 2*);
- (b) provide for an existing licence, in specified circumstances, to continue in force for a maximum period of three months (*regulation 7(1) and 15(2)*);
- (c) provide that, in granting a licence on application for renewal, the licensing authority may rely on an inspection carried out within 12 months prior to the date of expiry;
- (d) enable the relevant national authority (as defined) to determine an appeal by referring any matter back to the licensing authority (*regulation 15(6)*);
- (e) require the licensing authority to send an annual report to the relevant national authority in addition to the Health and Safety Commission (*regulation 19*).

The Regulations provide for transitional provisions in relation to the payment of fees (*regulation 20*).

The Regulations also revoke the Adventure Activities (Enforcing Authority and Licensing Amendment) Regulations 1996 (*regulation 21*).

A copy of the regulatory impact assessment prepared in respect of these Regulations can be obtained from the Department for Education and Skills, Pupil Safety & School Security Team, 2B1, Sanctuary Buildings, Great Smith Street, London SW1P 3BT. A copy has been placed in the library of each House of Parliament.