From Lyme Bay to Licensing to De-Regulation? The current state of safety within the outdoor activities sector

Dave Grant

**Key Message:** The outdoor activities industry is an important sector in the Scottish economy, generating approximately £600 million annually. However, the lack of uniformity and relatively narrow focus of existing safety legislation means there is a need for revision, but this is likely to have a considerable impact on the sector and on the wider rural economy in Scotland. This briefing discusses the historical development of the current legislation and offers some suggestions regarding the shape of future legislation and the potential implications for the industry.

**Historical Perspective**

Prior to the 1980s the provision of outdoor education and outdoor activities primarily fell to Local Education Authorities and charitable organisations. However, in the 1980s the commercial sector became a significant provider within the outdoor sector. This led to a general concern that the reduction in local authority monitoring and control would lead to a fall in standards of both quality and safety. Whilst there were a number of schemes in place which highlighted codes of good practice, these were only voluntary with no compulsion on organisations to follow them.

**Changing Times**

The events of March 1993 when four teenagers died whilst on a school trip, in what became known as the Lyme Bay canoeing tragedy, set the wheels in motion to establish a more robust safety assurance scheme. The canoeing tragedy was the result of a series of errors and circumstances, which, according to a subsequent report by Devon County Council, "quite simply, should not have happened".

The events that surrounded and led to the loss of these four young people re-invigorated the campaign to better regulate the safety of outdoor activity providers, particularly those providing activities for school children. The initial 'knee-jerk' response was to ban outdoor education for all school children. Fortunately there were enough advocates of outdoor education to counter this.

**The Move to Statutory Provision**

In November 1993, the UK Secretary of State for Education, John Patten, introduced a four-point plan as "government action to safeguard pupils and others in outdoor activity centres". This essentially...

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2 For more information, see: http://uk.practicallaw.com/books/9781845922597/chapter03#
3 For more information, see: http://www.aals.org.uk/lymebay01.html
amounted to guidelines for safe practice. However, following the high profile trial of those involved in the Lyme Bay tragedy in 1984, David Jamieson tabled a Private Members Bill which was accepted and supported by the Government, gaining Royal Assent in June 1995, as “The Activity Centres (Young Persons Safety) Act 1995”.

The Act states that “anyone who provides, in return for payment, adventure activities covered by the Regulations to young people under 18 years of age must have a licence and abide by its conditions”. The scope of outdoor activities that the Adventure Activities Licensing Authority (AALA) covered was limited to caving, climbing, trekking and watersports. So, to summarise, at this point it became mandatory for all providers of adventure activities to young people under 18 years of age to have a licence. This licence could only be acquired after a successful inspection of risk management procedures by AALA inspectors, all of whom had considerable experience working within the outdoor industry as instructors or coaches.

**Concerns with the Legislation**

As far back as the late 1990s there was discussion about the effectiveness and future of AALA and what could potentially replace it. One of the main concerns was that there were a considerable number of activities which were not covered by the scope of AALA, for example high ropes courses. With outdoor activities continually developing, this number would more than likely increase rather than decrease. In addition, the current legislation did not offer much protection for those over the age of 18.

One suggestion that was discussed was for the industry to be regulated not by legislation but by the market. It was felt that if the ‘whole’ outdoor industry had a safety scheme in place which providers had to buy into in order to receive a ‘kite mark’, then clients would only choose providers who had this ‘kite mark’. However, as with all such schemes the major concern was how the market would become informed enough to understand the importance of the ‘kite mark’ and at what financial threshold clients would ignore the ‘kite mark’ in order to choose ‘value for their money’. Nothing much came from these discussions though they offered a portent to the future. The AALA became the Adventure Activities Licensing Scheme (AALS) in April 2007 when the Health and Safety Executive (HSE) took over as the designated provider of the licensing scheme. In essence, however, there was little change to how the scheme was administered.

**Current Situation**

In 2011 the HSE announced that the AALS was to be abolished, though they did not offer an alternative regime to manage safety within the outdoor sector. It is important to note that the abolition was primarily aimed at England and Wales. Scotland had the option to stay with the ‘old’ system or develop its own new system along with England and Wales. Various meetings were held around the UK, including Scotland, attended by all interested parties involved with the outdoor pursuits sector. The meetings provided much discussion and debate but offered little in the way of a clear consensus. This was further reinforced by the various consultations which highlighted the need for a clear balance between guaranteeing safety for the whole industry, including those areas currently outwith the scope of AALS, whilst supporting the growth of the sector.

The current state of affairs is that the HSE have paused the abolition of AALS in order to provide more time in which to develop a regime “that reflects the level of risk of participating in adventurous activity while ensuring users are reassured about a provider’s safety management arrangements”.

4. For more information, see: [www.parliament.uk/briefing-papers/RP95-12.pdf](http://www.parliament.uk/briefing-papers/RP95-12.pdf)

5. For more information, see: [http://www.hse.gov.uk/aala/index.htm](http://www.hse.gov.uk/aala/index.htm)
HSE has stated that it will further consult on the issue later on this year “to seek views from all with an interest and to provide an opportunity to influence future arrangements”. Whilst this is essentially in England, Scotland will no doubt hold back on its decision to change the AALS system until they see what is proposed in England.

Implications for the Scottish Outdoor Sector

It is important to consider the implications of any change in legislation in the outdoor activities sector, within the wider policy context.

Scotland’s outdoors provides great opportunities for open-air recreation and education, which provide a range of health and other benefits. The importance of these benefits - and increasing them by raising participation in outdoor activities - is recognised within the Scottish Government’s National Performance Framework6, which sets out sixteen national outcomes, including ensuring people live ‘longer, healthier lives’ and that we ‘value and enjoy our built and natural environment’. To deliver these objectives, the Government has a specific indicator ‘To increase people’s use of Scotland’s outdoors’, measured by the proportion of adults making one or more visits to the outdoors per week7. Scotland’s Land Use Strategy8, published in 2011, also recognises the importance of ensuring access to the outdoors for health and wellbeing, to connect people to the land and to broaden understanding of issues relating to land use.

In terms of access, Part 1 of the Land Reform (Scotland) Act 2003 gives everyone statutory access rights – providing they are exercised responsibly - to most land and inland water. More broadly, the importance of the tourism sector for Scotland, and particularly for rural Scotland, is widely recognised, underpinned by outdoor recreation and landscapes. The Speak up for Rural Scotland consultation document produced by the Rural Development Council in 2010 and the Government’s response in 2011 (Our Rural Future), both identify the economic importance of the tourism sector to Scotland’s rural areas, and highlight actions that could be taken to strengthen the sector, including increasing collaboration amongst private sector businesses and boosting skill levels.

The Scottish outdoor industry is comprised of many different stakeholders, from providers of activities, to retailers and manufacturers of equipment and the wider supporting infrastructure, including accommodation, food, transport, etc. Any change in legislation could potentially have a much wider impact upon the industry beyond those involved simply in the delivery of outdoor activities. It is hard to actually quantify the value of the Scottish outdoor industry due to its complex make up but it was estimated that outdoor activities enthusiasts generated approximately £600 million in 20089. Of course this does not include all outdoor activities nor does it assume that these activities were delivered by providers bound by the AALS. The table below highlights some of the options and the potential impacts for the future. This by no means exhaustive and future discussion between the HSE and the outdoor sector will hopefully explore all options in order to produce a system which promotes the safe delivery of outdoor activities for all ages whilst supporting future development and innovation.

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6 For more information, see: http://www.scotland.gov.uk/About/Performance
7 46% of adults made one or more visits to the outdoors per week in 2011, compared with 48% in 2010, and 44% in 2006.
8 For more information, see: http://www.scotland.gov.uk/Topics/Environment/Countryside/Landusestrategy.
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<th>Action</th>
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| 1. No change and maintain the current system. | • Provision for over 18 year olds still unregulated.  
• Activities outwith scope of AALS still unregulated.  
• Will HSE Scotland continue with managing the scheme? | • Maintains status quo but does little to address the concerns of the outdoor sector with regards to client safety.  
• Unregulated development could still occur but the potential negative impact of a high profile incident could have a detrimental effect upon the wider outdoor industry.  
• Minimal to little positive impact on rural economy. |
| 2. Adapt the current legislation to be more encompassing. | • Substantial increase in cost of managing system.  
• How will scheme be financed?  
• Who will manage the scheme?  
• Will there be an increase in the cost of inspection to providers? | • Should provide cover for current scope of activities.  
• Regulation which covers a wider range of outdoor activities should promote safer delivery and therefore a more stable industry.  
• Future innovation may be hindered by legislation.  
• May stabilise industry and encourage limited growth in rural economy. |
| 3. Remove legislation and allow industry to develop unregulated. | • Potentially unqualified and inexperienced providers.  
• Potentially more accidents.  
• Industry becomes less stable and subject to greater scrutiny from media. | • Growth of sector but at what cost?  
• Potential negative impact of high profile incident could have a detrimental effect upon the wider outdoor industry.  
• Potential growth to rural economy but also potentially subject to sudden decline due to high profile incidents. |
| 4. Remove legislation and replace it with a ‘kite marking’ type scheme. | • Criteria for approval – payment or achievement of appropriate level of risk management?  
• Who will manage scheme?  
• How will the scheme be promoted to potential clients? | • Growth of sector with a degree of control but only if scheme is recognised by clients.  
• Sector may ‘fracture’ and form various ‘kite marking’ schemes thereby creating potential confusion and diluting impact of the scheme.  
• Potential growth to rural economy in short to mid term, but long term may be less stable due to multiple ‘kite marking’ schemes. |

To summarise, the outdoor industry is an important aspect of Scotland’s rural economy. Currently it is regulated by legislation, though the lack of uniformity and the relatively narrow focus means that there is a need for revision. The likely extent of this revision and whether it will remain regulated by legislation or become de-regulated is unknown, though whatever occurs is likely to have a considerable impact upon the outdoor activities sector and the wider rural economy within Scotland.

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