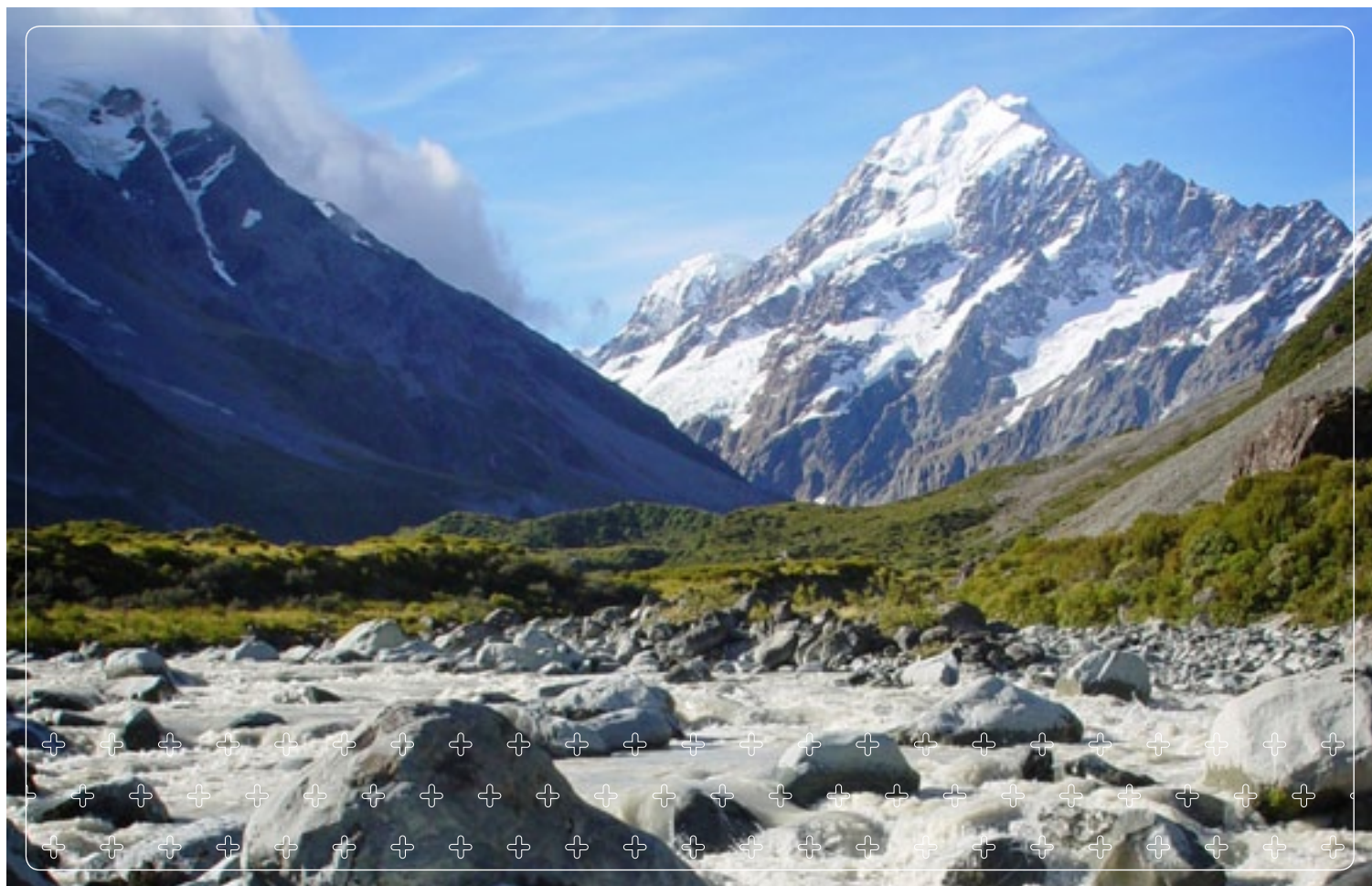




Health and Safety in Employment (Adventure Activities) Regulations 2011

Guidance for operators

MARCH 2012



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Contents

Minister's Foreword	5
Overview	6
Introduction	7
Principle behind the Department's interpretations	7
A. The notification process	8
1. What do operators need to do first?	8
2. When do operators need to do this by?	8
3. My activities occur in a diverse range of locations. How do I record my 'location address(es) of activity' on the notification form?	8
4. What happens after I have notified the Department?	8
5. When do I need to get a safety audit by?	8
B. What the regulations cover	9
6. Who is an operator?	9
7. What is an adventure activity?	10
8. What does 'in return for payment' mean?	10
9. What does 'being guided, taught how, or assisted to participate in the activity' mean?	10
10. What does 'the main purpose of which is the recreational or educational experience of the participant' mean?	11
11. What does 'designed to deliberately expose the participant to a risk of serious harm that must be managed by the provider of the activity' mean?	11
12. What does 'the participant is deliberately exposed to dangerous terrain or dangerous waters' mean?	12
13. How should the Schedule in the regulations be interpreted?	13
14. Are overseas-based operators covered?	15
15. Do contractors working for organisations that are registered, or are legally required to be registered, need to be audited and registered also?	15
16. Am I required to be audited and registered under the regulations if I provide adventure activities to sports clubs or recreation clubs, associations representing sports clubs or recreation clubs, or registered schools or tertiary education providers?	16



C. What the regulations do not cover	17
17. What does ‘an activity for which a maritime document is required’ mean?.....	17
18. What does ‘an activity for which instruction is given only in relation to the supply of equipment for use in the activity’ mean?.....	17
19. Are activities registered as amusement devices covered?.....	17
20. What does ‘ice-skating on a human-made surface’ mean?.....	17
21. What is a sports club or recreation club?.....	18
22. What is ‘an association representing sports clubs or recreation clubs’?.....	18
23. What is considered to be ‘encouraging interest in an association’s activities’?.....	18
24. What is the form of agreement required between clubs and education providers?.....	19
D. Exemptions	20
E. Other matters	20
25. I have registered to provide some activities but I want to offer a different kind of adventure activity outside the scope of what I was audited for before my next audit is due. Do I need another audit prior to delivering the new activity?.....	20
26. I have obtained a safety audit already. Do I need to get another safety audit for these regulations?.....	21
27. I have obtained a safety audit through Maritime New Zealand. Do I need to get another audit for these regulations?.....	21
F. Where to get more information	21
Appendix 1: Diagram – is your adventure activity covered by these Regulations?	22

Disclaimer

The information in this publication has no statutory or regulatory effect and is of a guidance nature only. The information should not be relied upon as a substitute for the wording of the Health and Safety in Employment (Adventure Activities) Regulations 2011.

While every effort has been made to ensure the information in this publication is accurate, the Department of Labour does not accept any responsibility or liability for error of fact, omission, interpretation or opinion that may be present, nor for the consequences of any decisions based on this information.





Foreword

Health and Safety in Employment (Adventure Activities) Regulations 2011: Guidance for Operators

New Zealand is a country rich with attractions and offers exciting adventure activities in spectacular locations. Our adventure activities industry is an important contributor to both our economy and our national identity.

Adventure activities, by their very nature, often involve some risk to participants. The Government introduced regulations to ensure operators have sound safety standards in place.

These Adventure Activities Regulations require operators who offer adventure activities to be safety audited and registered.

While the regulations cannot remove all risk, they do require all operators of this kind in New Zealand to ensure they have safety management plans in place.

This document has been developed to ensure that these operators fully understand the regulations and how they apply to their activities. Specifically, it provides clarification around Department of Labour interpretations of the regulations.

These new requirements will give foreign visitors and New Zealanders confidence that appropriate steps have been taken to keep them safe and ensure our adventure industry's excellent international reputation is maintained.

Hon Kate Wilkinson
Minister of Labour



Overview

New regulations governing the commercial adventure activities industry came into effect from November 1, 2011.

The Health and Safety in Employment (Adventure Activities) Regulations 2011 aim to address safety gaps identified in the Adventure Tourism Review to help keep New Zealanders and overseas tourists safe.

The regulations require commercial adventure activity operators in New Zealand to be safety audited and registered in order to provide an adventure activity in return for payment.

They don't apply to organisations that don't charge fees, such as schools or voluntary clubs.

There is a three-year transition period in place to ensure all operators can comply. From 1 November 2014, or earlier if an operator receives written notice requiring them to do so, it will be an offence to operate without being registered.

Adventure activity operators need to register with the Secretary of Labour by 1 November 2014, or earlier if an operator receives written notice requiring them to do so. A fee is payable for each year of registration. Operators also need to obtain and pass a safety audit from a recognised safety auditor. Operators will be audited for compliance with safety standards that apply to them. An audit may allow an operator to be registered for up to three years before another audit is required.

This guidance document aims to help operators to understand the regulations. Amongst other things, it provides clarification about what constitutes deliberately exposing participants to a risk of serious harm and what constitutes being guided or taught how to participate.

If you have any queries about the regulations and how they might affect you, please get in touch with the Department of Labour on 0800 20 90 20 or through our website www.dol.govt.nz.

The regulations can be found on the New Zealand Legislation website at www.legislation.govt.nz and this guidance document can be found on the Department of Labour's website at www.dol.govt.nz.



Introduction

The adventure activities sector has grown quickly to a significant size and is an important part of the New Zealand experience for our international visitors. The sector is innovative and dynamic.

New Zealand has a strong reputation for developing new and successful adventure activity products (such as commercial jet boating, bungy jumping and plastic sphere globe riding). We want to ensure that our reputation as an attractive high quality tourism destination is protected and ensure that all adventure activity participants are protected also.

The new Adventure Activities Regulations require all operators who provide activities that are designed to deliberately expose participants to a risk of serious harm to undergo a safety audit by a recognised auditor and be registered. This aims to ensure operators can't start up, or continue to operate, with inadequate safety systems.

The regulations cover many paid adventure activities, although activities run by sports clubs and schools are excluded from the regulations in most circumstances, as are events run by sports clubs or recreation clubs, or associations representing sports clubs or recreation clubs for the purposes of competition. They also do not apply to operators who provide activities that are not taught or guided. More information about what is covered and excluded is set out later in these guidelines (see Sections B *What the regulations cover* and C *What the regulations do not cover*).

The Secretary of Labour may grant an exemption to one or more operators from the requirement to be audited and registered. An exemption may also be cancelled. The Secretary will be the registrar. The registrar's functions include keeping and maintaining a public register of operators and suspending or cancelling the registration of operators in appropriate situations.

The regulations set out how adventure activity operators can register with the Secretary and how to obtain a safety audit from a recognised safety auditor. More specific guidance about safety audit processes will be provided by the Department later in 2012.

Principle behind the Department's interpretations

The principle behind many of the interpretations in this guidance document is that people who receive lessons or supervision as part of their adventure activity expect that the people instructing or supervising them will look after their safety. In contrast, people who do not receive lessons or supervision understand that they are responsible for their own safety.

To illustrate, if an individual chose to hire a kayak from a shop and took it to a river to undertake the activity on their own, as long as the equipment was fit for purpose, it would be reasonable to conclude that the individual was responsible for their own safety. If, however, the individual hired the kayak on the understanding that they were being supervised and would be rescued if necessary, it would be reasonable to conclude that the person or organisation hiring the equipment has a greater duty of care to ensure the individual undertaking the activity is safe.

Equipment hire where no guiding, instruction, or supervision is offered is a very different service compared to equipment hire where guiding, instruction, or supervision is offered and purchasers' expectations are different.

This guidance document outlines the Department of Labour's policy positions on the interpretation of a number of clauses and sub-clauses in the regulations. The interpretations in this document will inform the Department's actions in the enforcement of the regulations.



A. The notification process

1. What do operators need to do first?

All current operators must notify the Department of Labour regarding certain information about their businesses within the six months from 1 November 2011.

This will enable the Department to compile a database of adventure activity operators that are covered by the regulations and to record which of those operators do not hold a current safety audit certificate. Once that has been done, the Department can request operators that do not hold a current safety audit certificate to obtain one.

The easiest way to give written notice to the Secretary of Labour is to go to the Department's adventure activities regulations webpages (<http://www.osh.govt.nz/law/adventure-activities/index.asp>) and submit an online notification form. Alternatively, notification forms can be downloaded from the website or requested from the Department and submitted by fax or post.

2. When do operators need to do this by?

Adventure activity operators who provide adventure activities in the period starting on 1 November 2011 and ending on 30 April 2012 must provide written details about their business to the Secretary on or before 30 April 2012.

Any other adventure activity operators who start to provide adventure activities in the period starting on 1 May 2012 and ending on 31 December 2013 must provide the information about their business before providing the first such activity.

Operators who provide information to the Secretary about their businesses before 31 December 2012 may include evidence of any safety audit that has been passed, or commenced but not completed. Informing the Department that you have already started or passed a safety audit may mean that you do not need to obtain a further safety audit for the purposes of the regulations until the audit you have started or passed has expired.

3. My activities occur in a diverse range of locations. How do I record my 'location address(es) of activity' on the notification form?

The Department recognises that there will be cases where adventure activity operators offer adventure activities over a wide area or in multiple and changing areas. The Department asks that operators provide an address where they are able to (for example, an office, beginning point, etc.) and then give more general information about where they provide their adventure activities.

4. What happens after I have notified the Department?

After you have notified the Department about your business, you will receive an automated email from the Department confirming that your notification has been received.

You may not hear from the Department again for some time after you have received the initial confirmation email. This is because the Department needs to compile a database of adventure activity operators that are covered by the regulations and record which do not hold a current safety audit certificate. Once that has been done, the Department needs to sort the list and prioritise for the first safety audits those operators who do not hold a current safety audit certificate and who offer higher-risk activities.

5. When do I need to get a safety audit by?

It will become an offence to provide an adventure activity without being registered on 1 November 2014. However, the regulations say that the Department can require that operators obtain a safety audit and be registered earlier than that date.



The Department will require that some operators obtain a safety audit and be registered earlier than the latest time they could do so in order to reduce risks to participants in adventure activities and to manage safety auditors' workloads.

Operators will receive a letter, after the Department has completed building its database and has selected operators that it will require earlier safety audits from, confirming the date by which they must be audited and registered.

The Department is developing the registration and audit process and more specific information will be provided later in 2012. The Department will continue to work closely with industry associations as this next phase progresses.

Please note that notifying the Department about your business is not the same as registering your business. Registration of your business happens automatically after you have obtained a safety audit from a recognised safety audit provider and you have paid the audit and registration fee to the safety audit provider.

B. What the regulations cover

6. Who is an operator?

The regulations say an operator is a person (whether an employer, a principal, or a self-employed person) who provides an adventure activity to a participant.

'Provide' is further defined as meaning where an adventure activity operator:

- a. directly provides the activity in person; or
- b. indirectly provides the activity through an employee or other person.

An operator must have passed a safety audit and be registered even if they provide the activity indirectly (for example, through a volunteer or contractor).

Booking agents are not considered to be people who indirectly provide adventure activities, so they are not covered by the regulations.

Examples of who may be considered as an operator

Mount A Cross Country Skiing contracts skiing guides (rather than employees) to take clients on cross country skiing trips. *Mount A Cross Country Skiing* receives the payments from the clients and pays the skiing guides. *Mount A Cross Country Skiing* is therefore required to obtain a safety audit and be registered under the regulations because it is providing the adventure activities indirectly.

Note: Using contractors rather than employees does not absolve operators from obligations under the regulations.

Angela's Adventure Shop sells tickets to customers on behalf of adventure activity operators to do bungy jumps, guided canyoning trips and similar activities. *Angela's Adventure Shop* does not have to obtain a safety audit and be registered because it is only the booking agent and the activities are delivered by other businesses.

Bryan's Bus Tours sells package tours that include transport and some adventure activities. *Bryan's Bus Tours* pays the adventure activity providers and builds the cost into the tour price. *Bryan's Bus Tours* does not have to obtain a safety audit and be registered because it is acting as a booking agent and the activities are delivered by other businesses.

Note: Booking agents are not covered by the regulations.



7. What is an adventure activity?

To be covered by the regulations, an activity must meet certain criteria. These are defined as follows:

4 Definition of adventure activity

(1) In these regulations, adventure activity–

(a) means an activity–

- (i) that is provided to a participant in return for payment; and
- (ii) that is land-based or water-based; and
- (iii) that involves the participant being guided, taught how, or assisted to participate in the activity; and
- (iv) the main purpose of which is the recreational or educational experience of the participant; and
- (v) that is designed to deliberately expose the participant to a risk of serious harm that must be managed by the provider of the activity; and
- (vi) in which–
 - (A) failure of the provider’s management systems (such as failure of operational procedures or failure to provide reliable equipment) is likely to result in serious harm to the participant; or
 - (B) the participant is deliberately exposed to dangerous terrain or dangerous waters; and

includes, for example, an activity listed in the Schedule, but only to the extent that paragraph (a) applies to the activity.

Please see more discussion about the Schedule in Topic 13.

8. What does ‘in return for payment’ mean?

The regulations state that ‘adventure activity’ means an activity that is provided to a participant in return for payment.

‘In return for payment’ is considered to be receiving money for the provision of an adventure activity, regardless of whether it is for profit or just to cover costs or for charitable or fund-raising purposes.

9. What does ‘being guided, taught how, or assisted to participate in the activity’ mean?

The regulations state that an ‘adventure activity’ means an activity that involves the participant being guided, taught how, or assisted to participate in the activity.

This regulation is interpreted as requiring:

- › accompaniment during participation in the activity; or
- › supervision at a distance leading the participant to believe that assistance would be rapidly available if they encountered difficulty; or
- › planned contact between the participant and operator during the activity through some other means (for example, planned sightings while undertaking the activity or by mobile phone), leading the participant to believe that assistance would be rapidly available if they encountered difficulty; or
- › providing participants with instruction or guidance to develop competence or skill in order to undertake an activity; or
- › helping someone to undertake an activity; or
- › providing instruction about routes to be taken in ‘dangerous terrain’ or in ‘dangerous waters’ (as defined in this guidance document).



Examples of 'being guided, taught how, or assisted to participate in the activity'

1. *Esther's Kayaks* hires kayaks from a beach that participants may use within sight of Esther's staff. The staff watch over (supervise) the kayak users and rescue them if they get into trouble. If kayakers are permitted to enter 'dangerous waters' (as defined by this guidance document), *Esther's Kayaks* would be required to obtain a safety audit and be registered. If kayakers are not permitted to enter 'dangerous waters', *Esther's Kayaks* would not be required to obtain a safety audit and be registered. Topics 11, 12 and 13 in this guidance document explain why *Esther's Kayaks* would only be affected by the regulations when participants are in 'dangerous waters'.
2. *Grant's Trail Riding Co* offers commercial trail bike rides through a forest. Rather than guiding people, Grant's company provides participants with devices they can activate to summon help if needed. *Grant's Trail Riding Co* would be required to obtain a safety audit and be registered because it has made provision for participant-operator contact during the activity so that participants might reasonably infer that assistance would be rapidly available to them if they encountered difficulty.
3. In Town A there are two options for visitors to go sea kayaking to an island about 200 metres off shore. The local sports store hires out kayaks from the shop that customers can take wherever they like. Alternatively, *Harriet's Kayak Adventures* hires kayaks from the beach that customers are expected to use only in that vicinity.

The sports store shows customers how to fit the spray skirt, adjust the seat and anything else they want to know in order to use the equipment. It does not, however, provide customers with a lesson on how to paddle the kayak.

In contrast, *Harriet's Kayak Adventures* offers lessons on how to paddle the kayak and use its equipment, in line with the *Maritime New Zealand Safety Guidelines: Paddle craft rental activities – lakes, flat-water rivers and sheltered coastal areas*, before anyone can use its kayaks. It is assumed that the hirer does not know how to correctly paddle a kayak.

Under the regulations, *Harriet's Kayak Adventures* is required to obtain a safety audit and be registered **if the activity is carried out in dangerous waters as defined in this guidance document**, but the sports store is not. The reason for this is that instruction given only in relation to the supply of equipment is exempt from the regulations, but actions taken to develop competence or skill to undertake an activity (ie, teaching someone how to undertake an activity) are considered to be included. Topics 11, 12 and 13 in this guidance document explain why *Harriet's Kayak Adventures* would only be affected by the regulations when participants are in 'dangerous waters'.

Note that if participants choose to use Harriet's equipment unguided and unsupervised after the lessons, that use will be considered to be exempt from the regulations.

The principle behind the different treatment of the sports store and *Harriet's Kayak Adventures*, described above, is that participants who hire equipment for use on their own, believing they have the requisite skills, understand that they are responsible for their own safety. Participants who are taught how to undertake an activity (through developing their competence or skill) expect that some responsibility is being taken for their safety.

10. What does 'the main purpose of which is the recreational or educational experience of the participant' mean?

The regulations state that an 'adventure activity' means an activity that has the recreational or educational experience of the participant as its main purpose.

Events organised by sports clubs or recreation clubs, or associations representing sports clubs or recreation clubs, that have their main purpose as competition are not considered to meet that. Such events are specifically excluded from coverage by the regulations.

11. What does 'designed to deliberately expose the participant to a risk of serious harm that must be managed by the provider of the activity' mean?

The regulations state that 'adventure activity' means an activity that is designed to deliberately expose the participant to a risk of serious harm that must be managed by the provider of the activity.



For the purposes of the regulations, the phrase 'designed to deliberately expose the participant to a risk of serious harm' is interpreted to include activities that are offered, at least in part, with the intent of exposing participants to the experience of:

- › suspension from height of over three metres; or
- › strong water currents (ie, Grade 2 and higher rapids, and other waters in which the current would prevent upstream progress without the use of an engine-powered craft); or
- › the sea or lakes in which the participant is more than 100 metres from the shore, excluding any island, without supervision with a boat that can provide rescue to all participants; or
- › traversing glaciers; or
- › traversing canyons; or
- › traversing other geographical features that expose participants to risk of serious harm from flooding; or
- › traversing terrain which, in order to be done safely, requires the use of climbing equipment or the application of special skills or techniques; or
- › traversing areas exposed to avalanche danger; or
- › traversing uneven terrain: in which a vehicle being controlled by a participant could tip over and trap the participant (on or off any track), or; in which a vehicle being controlled by a participant exceeds speeds of 15kmh; or
- › diving to depths of over three metres.

Notes on the Department's interpretation of the regulation

Activities such as car racing and luge riding are not considered to be captured by the regulations unless they were traversing uneven terrain. 'Uneven' in this context means of irregular gradient and pitch, not just slopes on sealed tracks or roads.

Bicycles are not considered to be vehicles for the purposes of this guidance document.

The special skills or techniques referred to in the interpretation of the regulation do not include the skills and techniques required for mountain biking.

Serious harm has the meaning given by section 2 of the Health and Safety in Employment Act 1992. A definition can be found at <http://www.osh.govt.nz/law/hse-harm.shtml>

'Serious harm' includes: conditions that amount to or result in permanent loss of bodily function or temporary severe loss of bodily function; amputation of a body part; burns requiring referral to specialists; loss of consciousness, or acute illness under certain circumstances; and any harm that causes the person to be hospitalised for a period of 48 hours or more commencing within seven days of the harm's occurrence. The full definition should be consulted.

12. What does 'the participant is deliberately exposed to dangerous terrain or dangerous waters' mean?

The regulations refer to situations in which participants are deliberately exposed to dangerous terrain or dangerous waters.

For the purposes of the regulations, 'deliberately exposed to dangerous terrain or dangerous waters' may include the intent to expose participants to dangerous terrain or dangerous waters, where:



'Dangerous terrain' includes:

- › glaciers
- › canyons
- › terrain which, in order to be traversed safely, requires the use of climbing equipment or the application of special skills or techniques
- › terrain exposed to avalanche danger.

'Dangerous waters' includes:

- › rapids of Grade 2 and higher
- › other waters in which the current would prevent upstream progress without the use of an engine-powered craft
- › the sea or lakes in which the participant is more than 100 metres from the shore, excluding any island, without supervision with a boat that can provide rescue to all participants.

13. How should the Schedule in the regulations be interpreted?

The activities listed in the Schedule to the regulations are examples of the types of activities that are covered by the regulations. Activities are only covered by the regulations when regulation 4(1)(a) applies to them (see definition covered in Topic 7 of this guidance document).

The activities listed in the Schedule are:

- › Abseiling or rappelling (if done outdoors)
- › Bridge swinging
- › Bungy jumping
- › Canoeing
- › Canyon swinging
- › Canyoning
- › Caving
- › Glacier walking
- › High ropes course crossing, high wire crossing, or use of a zip wire
- › Kayaking
- › Mountaineering
- › Off-road vehicle driving
- › Quad biking or trail biking
- › River boarding
- › Rock climbing (if done outdoors)
- › SCUBA diving
- › Snow activities (if done outdoors and outside a patrolled ski area) such as skiing and snowboarding.

The types of activities considered as covered by the regulations fall into three categories:

- I. Those activities listed in the Schedule that, by their nature, all provision of that activity is considered to be covered
- II. Those activities listed in the Schedule that, by their nature, only some provision of that activity is considered to be covered
- III. Some activities not listed in the Schedule to which the regulations nevertheless apply.



Category I activities

All provision of these activities is covered by the regulations

- › Abseiling or rappelling (if done outdoors)
- › Bridge swinging
- › Bungy jumping
- › Canyon swinging
- › Canyoning
- › Glacier walking
- › River boarding
- › Rock climbing (if done outdoors).

Category II activities

Sometimes covered by the regulations

- › Canoeing and kayaking
- › Caving
- › High ropes course crossing, high wire crossing, or use of a zip wire
- › Mountaineering
- › Off-road vehicle driving
- › Quad biking or trail biking
- › SCUBA diving
- › Snow activities (if done outdoors and outside a patrolled ski area).



The regulations are considered to apply to Category II activities in the following circumstances:

Canoeing and kayaking – the regulations only apply to these activities when they are carried out in dangerous waters, as defined in this guidance document.

Caving – the regulations only apply to caving when the exploration of the caves requires, in order to be carried out safely, the use of climbing equipment or breathing apparatus for diving or the application of special skills or techniques, or where participants are exposed to risk of serious harm from flooding.

High ropes course crossing, high wire crossing, or use of a zip wire – the regulations only apply to the courses or zip wires if they suspend a participant more than three metres from the ground.

Mountaineering – the regulations only apply to mountaineering that involves traversing ‘dangerous terrain’, that is, terrain which, in order to be traversed safely, requires the use of climbing equipment or the application of special skills or techniques, or that is exposed to avalanche danger.

Off-road vehicle driving, quad biking or trail biking – the regulations only apply to off-road vehicle driving, quad biking or trail biking in uneven terrain: where the off-road vehicle, quad bike or trail bike is being controlled by the participant and could tip over and trap the participant (on or off any track); or where the off-road vehicle, quad bike or trail bike is being controlled by the participant and exceeds speeds of 15kmh.

For clarity, farmers or anyone else teaching their employees how to ride quad bikes are not covered by the regulations.

Note that any vehicles that are registered as amusement devices under the Amusement Devices Regulations 1978 are exempt from the Adventure Activities Regulations.



SCUBA diving – the regulations apply to SCUBA diving carried out in all waters other than swimming pools.

Snow activities (if done outdoors and outside a patrolled ski area) – the Department’s position is that ‘snow activities’ includes skiing, snowboarding or sliding on snow by some other means. The Department will only require operators of these activities to be audited and registered when the activity is carried out in terrain exposed to avalanche danger.

Note that other activities in snow, such as rock climbing or mountaineering, will not be considered to be ‘snow activities’ for the purposes of the regulations and will be covered by the regulations according to the activity, irrespective of whether or not they are inside or outside a patrolled ski area.

Category III activities are any activities not listed in the Schedule for which regulation 4(1)(a) nevertheless applies, and operators would therefore be required to pass a safety audit and be registered.

Examples of Category III activities

Any activity not listed in the schedule would be a Category III activity if regulations 4(1)(a)(i) to 4(1)(a)(v) apply to it **and**:

- **failure of the provider’s management systems (such as failure of operational procedures or failure to provide reliable equipment) is likely to result in serious harm to the participant (that is, regulation 4(1)(a)(vi)(A) also applies).** For example, luge riding is considered to be covered by the regulations where it occurs on uneven terrain* and exceeds speeds of 15kmh, because failure to provide reliable equipment would be likely to result in serious harm to the participant. (*As stated under Topic 11, ‘uneven’ in this context means of irregular gradient and pitch, not just slopes on sealed tracks or roads.)

- **participants are deliberately exposed to dangerous terrain as defined by this guidance document (that is, regulation 4(1)(a)(vi)(B) also applies in relation to dangerous terrain).** For example, glacier climbing, land-based fishing in a canyon, or tramping, trekking, hiking or hunting in terrain which, in order to be traversed safely, requires the application of special skills or techniques, or that is exposed to avalanche terrain, are considered to be Category III activities. Topic 12 in this guidance document discusses the interpretation of ‘dangerous terrain’.

- **participants are deliberately exposed to dangerous waters as defined by this guidance document (that is, regulation 4(1)(a)(vi)(B) also applies in relation to dangerous waters).** For example, land-based fishing, horse trekking, hunting, tramping, trekking or hiking operations in which participants are deliberately exposed to rapids of Grade 2 and higher are considered to be Category III activities.

Kite surfing, paddle boarding, sailing, surfing, water skiing and wind surfing operations in which participants are deliberately exposed to the sea or lakes in which the participant is more than 100 metres from the shore, excluding any island, and where there is no supervision with a boat that can provide rescue to all participants are also considered to be Category III activities.

Topic 12 in this guidance document discusses the interpretation of ‘dangerous waters’.

14. Are overseas-based operators covered?

Adventure activity operators who provide adventure activities in New Zealand, as defined by the regulations, are covered by the regulations irrespective of where they are based.

15. Do contractors working for organisations that are registered, or are legally required to be registered, need to be audited and registered also?

Contractors working for organisations that are registered, or are legally required to be registered, do not need to be audited and registered themselves to deliver activities for those organisations. However, the organisation that is registered has an obligation to ensure that the operator it has contracted to supply activities on its behalf is conforming to the same safety standards as the registered organisation would have to meet if it was providing the activities itself.



Only one organisation must be audited and registered for delivery of any one activity to a participant

Chris's Abseiling Ltd sub-contracts *Darren's Abseiling Co.* to take a group of people abseiling on a day that it is short of staff. *Chris's Abseiling Ltd* would be required to obtain a safety audit and be registered but *Darren's Abseiling Co.* would not for the activities it delivers for *Chris's Abseiling Ltd*. The reason for this is that *Chris's Abseiling Ltd* is responsible for all services delivered by parties that it contracts.

If *Darren's Abseiling Co.* provides activities under its own name and not under another company, it would have to be registered to provide those activities.

16. Am I required to be audited and registered under the regulations if I provide adventure activities to sports clubs or recreation clubs, associations representing sports clubs or recreation clubs, or registered schools or tertiary education providers?

Unless you are a sports club or recreation club, association representing sports clubs or recreation clubs, and registered school or tertiary education provider yourself, you are required to be audited and registered under the regulations.

Any adventure activity operator, as defined by the regulations, who provides an adventure activity to sports clubs or recreation clubs, associations representing sports clubs or recreation clubs, or registered schools or tertiary education providers is covered by the regulations and therefore must be audited and registered.

However, sports clubs or recreation clubs, associations representing sports clubs or recreation clubs, and registered schools or tertiary education providers are exempt from the regulations if they provide activities themselves under certain circumstances.

Examples in which clubs and tertiary education providers are exempt from the regulations but adventure activity businesses are not exempt

The Town B Caving Club pays *Imogen's Cave Trips* to take a group of members caving. The club gets reimbursed by the members. The club does not have to obtain a safety audit and be registered, but *Imogen's Cave Trips* does.

The University of City A (as a tertiary education provider as defined by the Education Act 1989) pays *John's River Trips Ltd* to take a group of its students on kayak trips down a Grade 2 river as part of its geology degree field trip. The university collects payments from the students. The university does not have to obtain a safety audit and be registered, but *John's River Trips Ltd* does.

Schools, tertiary education providers, associations representing sports clubs or recreation clubs, and sports clubs or recreation clubs that contract operators are not covered by the regulations, but the operators are.



C. What the regulations do not cover

17. What does 'an activity for which a maritime document is required' mean?

An activity that requires a maritime document (as defined by section 2(1) of the Maritime Transport Act 1994) is not an adventure activity under these regulations.

The regulations do not apply to activities for which a maritime document is required because they are already subject to an audit and inspection regime under licences granted by the Director of Maritime New Zealand under the Maritime Transport Act 1994.

Adventure activities in this category include commercial river rafting operations and commercial jet boating on rivers, for which the Minister of Transport has made specific maritime rules requiring operators to hold maritime documents. Fishing from boats and shark cage diving are other examples of activities that are exempt under the regulations.

18. What does 'an activity for which instruction is given only in relation to the supply of equipment for use in the activity' mean?

For an activity to be considered to be the supply of equipment only, participants must not be guided, or taught how, or assisted to participate in an activity, as defined in this guidance document (see topic 9).

If instruction is given only in relation to the supply of equipment for use in the activity this is not considered an adventure activity under the regulations.

Examples of activities that are exempt from the regulations

Mount C Ski-field hires skiing equipment so that people can take advanced skiing lessons within the ski area boundary. Participants in the skiing lessons are then free to use the skiing equipment outside of the ski area boundary.

Mount C Ski-field does not need a safety audit to provide the skiing lessons because snow activities within a patrolled ski area are exempt from the regulations. Additionally, if participants choose to use equipment they have hired for lessons for unguided and unsupervised use after the lessons, the Department will consider that to be exempt from the regulations.

19. Are activities registered as amusement devices covered?

Use of an amusement device (as defined by section 21A(1) of the Machinery Act 1950) is not considered to be an adventure activity because such use is already subject to an inspection regime under the Amusement Devices Regulations 1978.

Any activity that is registered as an amusement device under the Amusement Devices Regulations 1978 (which are made under the Machinery Act 1950) is exempt from the Adventure Activities Regulations.

20. What does 'ice-skating on a human-made surface' mean?

Ice-skating on a human-made surface is not an adventure activity under the regulations because it is not considered to be an activity that is designed to deliberately expose the participant to a risk of serious harm that must be managed by the provider of the activity.

For the purposes of the regulations, 'a human-made surface' is interpreted as any ice skating surface *other than* that which forms naturally on a pond, lake, river or dam.



Ice skating operators will be considered to be covered by the regulations where the ice skating occurs on ponds, lakes, rivers or dams where any part of the ice is on water more than 500 millimetres deep. Ice skating operators are not considered to be covered by the regulations where any waters on which ice has formed are less than 500 millimetres deep at their deepest point.

21. What is a sports club or recreation club?

The regulations state that an adventure activity does not include an activity provided by a sports club or recreation club to:

- (a) a member of the club; or
- (b) a member of another sports club or recreation club under an agreement between the clubs; or
- (c) a person who is not a member of the club if the activity–
 - (i) is provided only to encourage membership of the club or interest in the club’s activities; and
 - (ii) is provided to any one person on no more than 12 days in any 12-month period.

A sports club or recreation club is a not-for-profit club established for sports or recreation purposes. It may or may not be an incorporated society or trust.

22. What is ‘an association representing sports clubs or recreation clubs’?

The regulations state that an adventure activity does not include an activity provided by an association representing sports clubs or recreation clubs to–

- (a) a member of the association or of any of the clubs; or
- (b) a member of another association, or of any sports clubs or recreation clubs represented by the other association, under an agreement between the associations; or
- (c) a person who is not a member of the association, or of any of the clubs it represents, if the activity–
 - (i) is provided only to encourage membership of the association or interest in the association’s activities, or for the purposes of a competition; and
 - (ii) is provided to any one person on no more than 12 days in any 12-month period.

An association representing sports clubs or recreation clubs is a not-for-profit organisation established to represent sports or recreation clubs. It may or may not be an incorporated society or trust.

Examples of associations representing sports clubs or recreation clubs are: national sports organisations such as Triathlon NZ; regional sports trusts such as Sport Waitakere; regional sports organisations such as Swimming Wellington; and national recreation organisations such as Federated Mountain Clubs.

23. What is considered to be ‘encouraging interest in an association’s activities’?

Regulation 4(5)(c)(i) states that an adventure activity does not include an activity provided by an association representing sports clubs or recreation clubs to:

- (c) a person who is not a member of the association, or of any of the clubs it represents, if the activity–
 - (i) is provided only to encourage membership of the association or interest in the association’s activities, or for the purposes of a competition;

If an association’s activities are centred around specific recreational activities (for example, tramping) and encouraging interest in those specific recreational activities is the purpose of the association’s activities, the association’s activities will be considered to meet that and therefore will not be covered by the regulations.



Example of encouraging interest in an association's activities

An outdoor rock climbing association that represents the outdoor rock climbing clubs in a particular region wishes to offer monthly 'have a go' days to the public to encourage interest in outdoor rock climbing and hopefully increase the membership numbers of the clubs it represents. Because one purpose of the 'have a go' days is to encourage interest in rock climbing, the 'have a go' days will be considered to be exempt from the regulations.

24. What is the form of agreement required between clubs and education providers?

The regulations state that sports clubs or recreation clubs, associations representing sports clubs or recreation clubs, and registered schools or tertiary education providers can offer adventure activities to members or students of their equivalents when they have an agreement to do so with their equivalents.

These agreements need not be written.



D. Exemptions

The Secretary of Labour may, at his or her discretion, grant an exemption from the regulations. An exemption may apply to:

- › one or more particular adventure activity operators
- › one or more types of adventure activity operator
- › any adventure activity operator who provides one or more particular adventure activities or types of adventure activity.

The Department will consider applications for exemptions where it is not clear that the particular operator(s) or types of operator meets the definitions in the regulations or this guidance document or where it appears that coverage of the operator(s) by the regulations is inconsistent with the Government's policy intent.

Exemptions could apply to specific activity types.

E. Other matters

25. I have registered to provide some activities but I want to offer a different kind of adventure activity outside the scope of what I was audited for before my next audit is due. Do I need another audit prior to delivering the new activity?

If your business wants to provide adventure activities (as defined by the regulations) that are different to the activities you notified the Department about or that are outside the scope of the safety audit you have obtained and the activity you are registered to provide, you will need to take additional steps as follows.

Notification

If your business wants to provide the different activities *before* 31 December 2013, you must notify the Department of your intentions. If your business wants to provide the different activities *after* 31 December 2013, you do not need to notify the Department of your intentions (although you will still need to obtain a safety audit and registration).

Topic 2 in this guidance document outlines the timeframes for meeting the requirements of the notification process.

Auditing and registering

If your business wants to provide adventure activities (as defined by the regulations) of a different kind than those it was offering when it was audited and registered, you must approach an auditing body for an update of your safety audit certificate conditions.

Notifying the Department about your business in accordance with regulation 8 is not the same as registering your business. Registration of your business happens automatically after you have obtained a safety audit from a recognised safety audit provider and you have paid the audit and registration fee to the safety audit provider.



26. I have obtained a safety audit already. Do I need to get another safety audit for these regulations?

The Department of Labour will accept many safety audits that operators have obtained prior to the regulations coming into full effect (for example, in order to get a Department of Conservation concession) as long as operators give written notice by 31 December 2012 that they have obtained them. Topic 1 in this guidance document explains the easiest way of providing the Department with written notice.

Information about which safety audits will be accepted will be available on the Department of Labour’s website (www.dol.govt.nz) or the Support Adventure website (www.supportadventure.co.nz).

The safety audits will be accepted until they have expired, or three years after they have been obtained, whichever comes first. Subsequent audits will need to be obtained from safety audit providers that have been formally recognised by the Department of Labour for that purpose. The Department of Labour and *Support Adventure* websites will contain information about which safety audit providers have been formally recognised.

To remain registered and be able to continue to operate, operators who have had their existing safety audits accepted will need to obtain a new safety audit from a formally recognised provider before their existing one has expired or the three years has passed.

27. I have obtained a safety audit through Maritime New Zealand. Do I need to get another audit for these regulations?

If you have passed a safety audit for your approved safety plan under the Maritime New Zealand guidelines for commercial white-water boarding operations, you will not need to get an audit under the regulations until the next audit is due (normally two years unless required more frequently by the Director of Maritime New Zealand).

F. Where to get more information

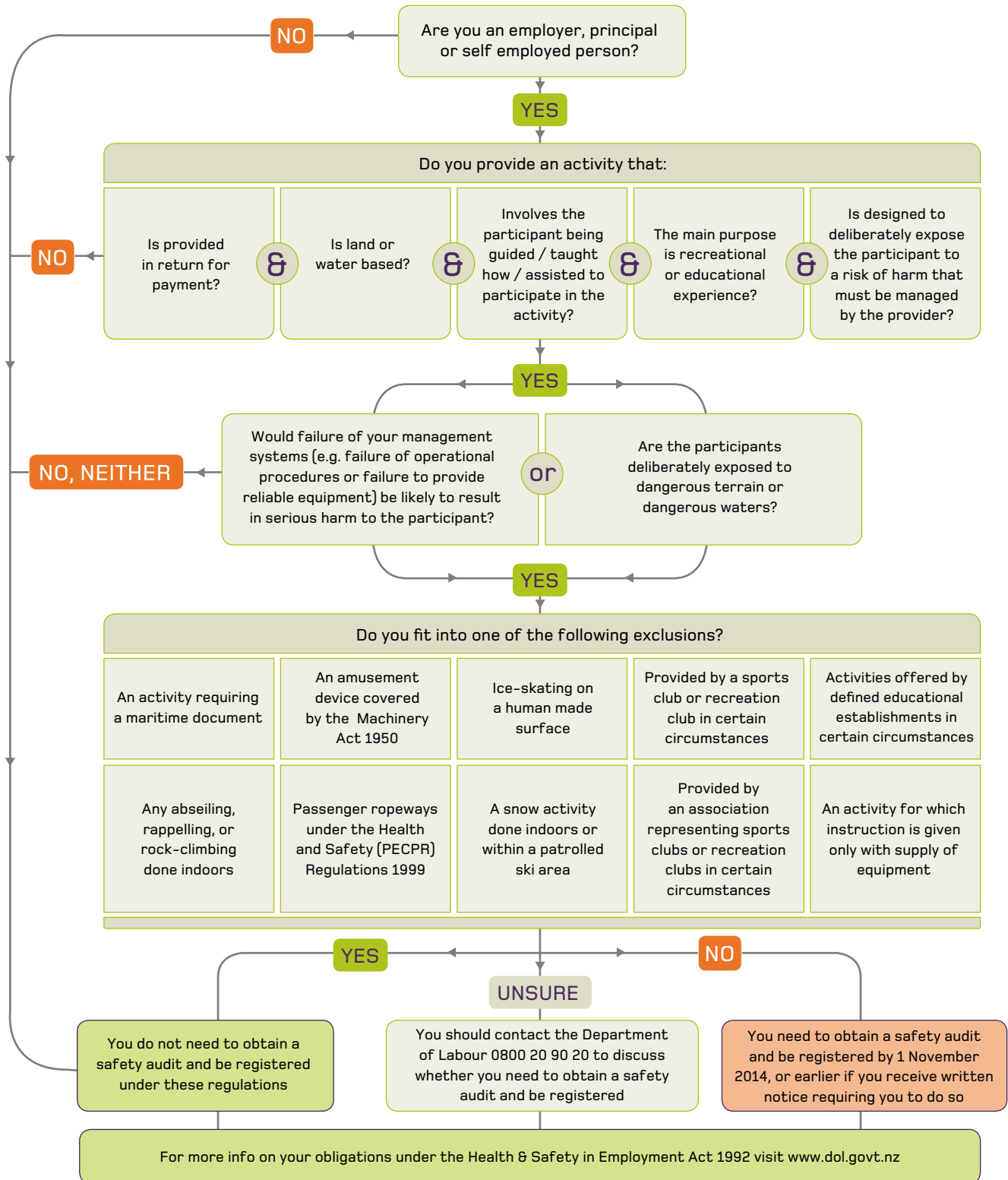
The Tourism Industry Association New Zealand and Outdoors New Zealand have developed a dedicated website to provide the commercial adventure activities industry with guidance about safety management and meeting their legal requirements. The website can be found at www.supportadventure.co.nz

Frequently asked questions about the regulations and a copy of the regulations can be found at <http://www.dol.govt.nz/consultation/adventure-tourism/update.asp>

For more information or to give feedback in relation to this guidance document, please email the Department of Labour: H&SInformationRequest@dol.govt.nz

Appendix 1: Diagram – is your adventure activity covered by these Regulations?

Health & Safety in Employment (Adventure Activities) Regulations 2011







⇒ More information

www.dol.govt.nz

0800 20 90 20

Further information can be found on our website or by calling us free on 0800 20 90 20.

