

Commitment to Safety with School and Youth Groups in Kenya

OUTDOOR EDUCATION LEGISLATION

Explanation

Currently there is no binding legislation for companies offering adventure activities outside the United Kingdom and Eire. It is, to a large extent, an issue of trust between the provider and the consumer. This is because health and safety standards in the UK cannot be adhered to in a foreign country where a) those standards are below that of the UK, and b) where foreign country laws apply.

At Adventure Alternative we want to show that we are taking the issues of safety and professionalism very seriously. This document identifies the relevant clauses from the UK Outdoor Education Legislation that are pertinent to the youth expeditions that we offer in Kenya (especially Africamp but relevant to any youth expedition or Gap Year experience that we offer).

We are not licensed under this legislative body because we do not offer adventure activities for schools or youth groups in the UK, but we make the commitment to abide by the principles contained therein, and to our best abilities in a developing country, where facilities often cannot be compared to the UK.

In the text below we have taken only **quoted excerpts** of relevant legislation to our trips to give you the definitive guidance, and beneath we have added **our own comments in blue** to show how our commitment relates to it.

The full legislative details can be viewed on the following website address – http://www.outdoor-learning.org/info_centre/regulations.htm#packagetravel

Introduction to the Legislation

The legal circumstances within which Outdoor Education takes place are complex and rest on a number of laws, issued guidance, codes of practice and interpretation of case law. As we have no formal training or qualification in this area the following should be considered as guidance only. The reader is therefore encouraged to check for themselves, preferably with a legal representative of their organisation.

Adventure Alternative underlines the fact that outdoor education legislation is legally relevant to the UK. The Code of Practise which AA adheres to is based on a commitment to the principles contained within.

The Regulatory Framework

- The person 'in loco parentis' stands in the place of the parent and owes a **duty of care** to the child equal to the duty of care owed by a reasonable parent; that is a careful parent.

Every AA staff member is fully briefed about his and her level of accountability to all youth members of our expeditions, and they have all had more than 5 years experience of working with young people.

What's it all about?

The legislation introduces a licensing scheme, the aim of which is 'to give assurance that **good safety management practice** is being followed so that young people can continue to have opportunities to experience exciting and stimulating activities outdoors while not being exposed to avoidable risks of death and disabling injury.'

The approach to the scheme is founded on **assuring good safety management** - which also involves a systematic approach to recognising risks...The new licensing scheme is aimed at those who sell adventure activities to schools and to the public. For all these purposes, young people are those under 18 years of age.

AA adheres to the principles contained within the licensing scheme, but because the licensing scheme only exists for commercial providers operating within the UK, we take this as a central pillar of our corporate promise to schools and parents. We then adjust it according to the specific needs and requirements of being in Kenya .

So who doesn't need a licence?

Most schools and voluntary youth groups will not need a licence. This is because they will either be exempt, or be providing activities which are not covered by the Regulations...

...Although, in consequence, the great majority of adventurous activities will be provided entirely outside the regime introduced by this legislation, **the maintainance of high standards of safety and competence in adventurous activities remains of paramount importance.**

Again, providers of adventure activities outside the UK do not need a license to legitimately operate the trips to UK residents, but we consider it our duty to conform to all the correct elements of leadership and instruction that we consider necessary to run our youth trips to Kenya, and to operate the highest standards of competence and responsibility.

The Regulations apply to the following activities:

caving (underground exploration in natural caves and mines including potholing, cave diving and mine exploration); climbing (climbing, traversing, abseiling and scrambling activities except on purpose-designed climbing walls or abseiling towers);

...**trekking** (walking, running, pony trekking, mountain biking, off-piste skiing and related activities when done in moor or mountain country which is remote ie. over 30 minutes travelling time from the nearest road or refuge); **Mount Kenya on Africamp counts as trekking.**

The **definition of trekking** now includes effectively all travel (ie. not just walking) which takes place either on moorland (regardless of height above sea-level) or on any land above 600 metres and where the nearest accessible road (usable by an ordinary ambulance) or refuge (manned or with a telephone is more than 30 minutes away).

What are the licensing standards?

The Guidance goes into considerable detail on the standards to be set for the granting of a licence. In particular, the licensing authority will look for:

well implemented systems of **risk assessment**; Yes, AA has these and they are available for reading on our website, they are tried and tested and very specific to the exact trip we offer in Kenya

properly documented **safety management procedures**. Yes, we have an internal system of communication and responsibilities which is printed out for every staff member and is included in our pack for schools to inspect

It is recognised that these will quite reasonably **differ in their complexity** according to the level(s) of the activity/ies undertaken, and the size of the providing organisation at the centre concerned. All our assessments and procedures are written following over 10 years of experience in Kenya where we now have precise and comprehensive understanding of the levels of activities being undertaken.

So far as the **competence(s) that will be expected or required from instructors** are concerned, the Guidance (but not the Regulations) includes a number of detailed tabulations of what would be regarded as appropriate. However, the Guidance also emphasises that :

'experience is also important; a person who holds the right technical qualification but has little practical experience may not be competent to advise' and also that 'providers may demonstrate the competence of their instructors by externally awarded qualifications, in-house training, experience or any combination of these...the licensing authority should accept whichever means a provider chooses, so long as it is satisfied that instructor competence has been demonstrated.'

Our biggest asset is our staff; we have a higher ratio of staff to clients than is necessary, currently 1:8 on our Africamp. We employ our own local staff through our own company who are all qualified in their specialty and all our UK staff are highly experienced and have been running expeditions to Kenya for anything between 5 and 10 years. Crucially they are still the same staff members and therefore have considerable knowledge of the standards which Adventure Alternative sets.

Package Travel Regulations - EU Directive on Package Travel

The EU Package Travel Directive came into force in June 1990 as a consumer protection measure and was incorporated into UK law in December 1992. It defines the **responsibilities of tourism operators** in relation to '**packages**' which they sell or promote.

A 'package' is a prearranged combination of two or more of the following, offered at an inclusive price and covering a period of at least 24 hours or overnight accommodation:

transport; No we do not provide airline tickets which would render us liable for an ATOL bond. But we do provide local in-country transport with our own vehicles, principally overland safari trucks which are registered in the UK. We also use local transport such as trains to Mombasa and coaches which we handpick for suitability. Our staff always accompany groups on local transport.

accommodation; yes, we provide our own accommodation at our own site in Nairobi which is the registered base for our company there and is very safe and protected. We provide tents for all other accommodation on the mountain or in rural areas.

other tourist services which account for a significant proportion of the package. Yes, we provide the whole package, we do not outsource our services. We guide the trip ourselves with our own staff and we offer trekking, beach activities, community projects and visits all within our own remit.

The law relating to package travel requires the tour operator to:

provide full and accurate details about packages including terms and conditions; our brochures gives day by day itineraries and a complete and full description of all the aspects of accommodation, transport and activities for the whole trip. This is also available on our website and we keep in close contact with all expeditioners by email throughout the whole pre-trip planning stage. We also give talks to the school and meet the parents.

provide **guarantees for any advance booking monies** until the trip has taken place; we keep all client money in a client account according to European Directive requirements and we do not touch this money prior to the trip taking place. We do not provide flights and we do not have any advance bookings for Africamp because our own company in Kenya is completely set up and prepared for the trip.

be liable as well as **responsible for the services** supplied by their sub-contractors. We do not have any sub-contractors, nor do we outsource our services or responsibilities.

As consumers this legislation should provide security in a variety of ways not least of which is protection of deposits and late changes in arrangements. Tour operators must provide **financial security of prepayments** in one of three ways:

Bonding - setting up a form of business guarantee usually through an association such as ABTOT (The Association of Bonded Travel Organisations Trust Ltd); we do not provide flights so it is not mandatory for us to be ABTOT bonded.

insurance - an individual policy for each customer; we have full tour operators liability insurance through Aon Risk Services in London and in over ten years we have never had a claim made against us, or for any issue of insolvency or financial security. We have bookings terms and conditions which clearly lay out the procedure in the event of a cancellation. We ask that customers provide their own travel insurance policy for their trip.

trust accounts - lodging prepayments in a secure account until the package has been taken. We have a client account which is secure. All client money is held in this account until the trip is over. This account is called Adventure Alternative Client Account. Our bank can confirm that this account exists and that we use it for safekeeping of client monies.

When booking an excursion with a tour operator or with anyone offering a 'package' as previously defined, you should ensure that they are complying with the **EU Directive**. As a minimum you should ask for information on how they are providing financial security for prepayments and be satisfied that there is compliance with one of the three options outlined.

We fully comply with the European Directive for Tour operators. Please see our document entitled [European Directive Commitment](#).

References

British Tourist Authority. EU Package Travel Directive - Explanation Notes for the Tourism Industry. BTA, 1993.

Department of Trade and Industry. Guide for Organisers and Retailers - Looking into the Package Travel Regulations. DTI, 1995.

Children's Act

The 1988 Children Act redefined the legal relationship of parents with their children and Local Authorities (and any carers they employ or contract) with children. (This) Act gives effect to the UN Convention on the Rights of the Child (Article 12). Clearly, not all aspects of the law are relevant to Outdoor Education, but there are specific areas which require some attention. These relate primarily to children being 'looked after' (this term replaces 'in care') by the Local Authority, children with disabilities and those in residential schools. For those working in Outdoor Education these are the likely implications. We fully respect and understand the extent of our responsibility to children under this Act and since we also operate a childrens charity in Kenya we have particular concern to ensure that Childrens Rights are properly identified and upheld at all times.

a) For those children being 'looked after' there are increased obligation on the part of the Local Authority to ensure that their responsibilities towards them are discharged properly.

b) Residential schools may be inspected. It is not clear whether this also applies to Residential Outdoor Education Centres, but it is probably fair to say that this may be the prerogative of the Local Authority, especially in the case of children being 'looked after'. All our facilities are open to be inspected in Kenya by visiting teachers or parents and/or accompanying school staff. We welcome this.

c) Special provision is made for children from ethnic minorities or with disabilities, where the requirement is that they should have the opportunity to lead as normal a life as possible. [We actively promote and wish to attract any young person to take part in Africamp. Since much of the trip is about interacting with disadvantaged children in Kenya, we want this trip to break down barriers and misperceptions.](#)

d) There are substantial implications for those employed in Social Work with special regard for those children placed in foster care. This is particularly the case where there are disabilities, social difficulties or emotional difficulties. [This section is not relevant to us.](#)

Additional Adventure Alternative Policies and Codes of Practise

Please check our other policies and statements regarding Responsible Tourism and legislation

- a) Sustainable Tourism
- b) Fair Play – our commitment to offering a fair deal to all our clients’
- c) Health & Safety Policy and Implementation
- d) Risk Assessments for the Africamp Expedition – stage by stage
- e) Environmental Impact Assessment for the Africamp Expedition
- f) The Risk of Aids while travelling
- g) Child Protection Policy
- h) Country Staff Responsibilities and Contacts
- i) Emergency phone numbers for Risk Assessment
- j) Mount Kenya Information in Detail
- k) Company History and Credentials

Adventure Alternative – leaders in the industry

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