

Reprint
as at 1 August 2020



Health and Safety at Work (Adventure Activities) Regulations 2016 (LI 2016/19)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 15th day of February 2016

Present:

His Excellency the Governor-General in Council

These regulations are made under sections 211 and 218 of the Health and Safety at Work Act 2015—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Workplace Relations and Safety made after complying with section 217 of that Act.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Regulations

1 Title

These regulations are the Health and Safety at Work (Adventure Activities) Regulations 2016.

2 Commencement

These regulations come into force on 4 April 2016.

Part 1

Preliminary provisions

Interpretation

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Health and Safety at Work Act 2015

adventure activity has the meaning given in regulation 4

adventure activity operator or **operator** means a PCBU who provides an adventure activity to a participant

amusement device—

(a) means an appliance to which the motion of a prime mover is transmitted and that is used, or designed or intended to be used, for the amusement, recreation, or entertainment of persons being carried, raised, lowered, or moved by the appliance or any part of the appliance while it is in motion; and

(b) includes the prime mover, transmission machinery, supporting structure, and any equipment used or intended to be used in connection with the appliance

prime mover means an engine, motor, or other appliance that provides mechanical energy derived from steam, water, wind, electricity, gas, gaseous products, compressed air, the combustion of fuel, or any other source

provide, in relation to an adventure activity, means where an adventure activity operator—

(a) directly provides the activity in person; or

(b) indirectly provides the activity through a worker or any other person

recognised Registrar means a person or an organisation recognised by Work-Safe in accordance with regulation 13

register means the register of adventure activity operators kept under regulation 17

Registrar of adventure activities or **Registrar** means—

- (a) the recognised Registrar (if any); or
- (b) WorkSafe, if there is no recognised Registrar

safety audit standard means a safety audit standard (including any changes to a safety audit standard) published under regulation 19

safety auditor means a person or an organisation recognised by WorkSafe in accordance with regulation 9

transmission machinery means any shaft, wheel, drum, pulley, system of fast and loose pulleys, gearing, coupling, clutch, driving belt, chain, rope, band, or other device by which the motion of a prime mover is transmitted to or received by any machine or appliance.

- (2) Terms or expressions used and not defined in these regulations but defined in the Act have, in these regulations, the same meaning as in the Act.

Compare: 1950 No 52 s 21A(1); SR 2011/367 r 3

4 Meaning of adventure activity

- (1) Subject to subclauses (2) to (5), 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 serious risk to his or her health and safety 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 a serious risk to the participant’s health and safety; or
 - (B) the participant is deliberately exposed to dangerous terrain or dangerous waters; and
 - (b) includes, for example, an activity listed in Schedule 2, but only to the extent that paragraph (a) applies to it.
- (2) An **adventure activity** does not include any of the following:
 - (a) an activity for which a maritime document is required:

- (b) an activity for which instruction is given only in relation to the supply of equipment for use in the activity;
 - (c) use of a passenger ropeway;
 - (d) use of an amusement device;
 - (e) abseiling or climbing, if done indoors;
 - (f) ice-skating on a human-made surface;
 - (g) a snow activity that is done indoors or within a patrolled ski area.
- (3) 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, or only for the purposes of a competition; and
 - (ii) is provided to any 1 person on no more than 12 days in any 12-month period.
- (4) An **adventure activity** does not include an activity provided by an association representing a sports club or recreation club 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 1 person on no more than 12 days in any 12-month period.
- (5) An **adventure activity** does not include an activity provided by a registered school or a tertiary education provider to—
- (a) a student of the school or provider; or
 - (b) a student of another school or provider under an agreement between the schools or providers; or
 - (c) a person who is not a student of the school or provider, if the activity—

- (i) is provided only to encourage enrolment with the school or provider or interest in the activities of the school or provider; and
- (ii) is provided to any 1 person on no more than 12 days in any 12-month period.

(6) In this regulation,—

maritime document has the same meaning as in section 2(1) of the Maritime Transport Act 1994

passenger ropeway has the same meaning as in Schedule 1 of the Health and Safety in Employment (Pressure Equipment, Cranes, and Passenger Ropeways) Regulations 1999

registered school has the same meaning as in section 10(1) of the Education and Training Act 2020

tertiary education provider has the same meaning as in section 10(1) of the Education and Training Act 2020.

Compare: SR 2011/367 r 4

Regulation 4(6) **registered school**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Regulation 4(6) **tertiary education provider**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Transitional, savings, and related provisions

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

Part 2 Adventure activities

Adventure activity operators

6 Requirement for adventure activity operator to pass safety audit

- (1) Before providing or offering to provide any adventure activities to a participant, an adventure activity operator must—
 - (a) obtain a safety audit in respect of the operator's provision of the adventure activities from a safety auditor; and
 - (b) pass the safety audit; and
 - (c) provide the safety auditor with the following information:
 - (i) the operator's full name;
 - (ii) a description of the adventure activities that the operator provides;

- (iii) the address of each place of work at which the operator provides the adventure activities;
 - (iv) if the operator provides the adventure activities through a business or another operation, any legal name or trading name of the business or operation.
- (2) A safety auditor who conducts a safety audit under subclause (1) must—
 - (a) audit the operator for compliance with the 1 or more safety audit standards that apply to the activities; and
 - (b) give written notice to the operator of whether the operator passed the audit and, if the operator failed the audit, the reasons for the failure.
- (3) If the adventure activity operator passes the safety audit, the safety auditor must—
 - (a) issue a safety audit certificate to the operator that specifies—
 - (i) the adventure activities that were audited; and
 - (ii) the period for which the audit is valid, which must not exceed 3 years; and
 - (iii) the conditions (if any) to which the certificate is subject; and
 - (b) promptly provide to the Registrar a copy of the safety audit certificate and any other information needed for the operator to be registered; and
 - (c) pay to the Registrar, on demand, any fee payable under regulation 17(4) for registration of the operator for the period for which the audit is valid.
- (4) A safety auditor may issue a safety audit certificate subject to any conditions—
 - (a) that the auditor considers are required to maintain the safety of the adventure activities; and
 - (b) that are consistent with the 1 or more safety audit standards that apply to the activities.
- (5) Registration may be renewed under this regulation and regulation 7 as if it were a new registration.

Compare: SR 2011/367 r 5

7 Registration of adventure activity operator

- (1) If the Registrar of adventure activities receives a copy of a person's safety audit certificate and the other information required by regulation 6(3)(b), the Registrar must promptly register the person as an adventure activity operator authorised to provide the adventure activities specified in the certificate, unless registration is declined under subclause (2) or (3).
- (2) The Registrar must decline to register the person if the Registrar is satisfied on reasonable grounds that—

- (a) the person provided false information or evidence to obtain the certificate; or
 - (b) the person is not an adventure activity operator; or
 - (c) the person is unfit to be registered because of the improper way in which the person previously provided adventure activities.
- (3) The Registrar may decline to register the person if the Registrar is satisfied on reasonable grounds that—
- (a) the person has not complied with a condition of the certificate or any prior certificate; or
 - (b) the person's previous failure to safely provide adventure activities, so far as is reasonably practicable, has endangered, or may have endangered, a person's life; or
 - (c) the person has previously, while the requirement in regulation 8(1)(a) applied, provided adventure activities that the person was not registered to provide.
- (4) Before declining a person's registration, the Registrar must give the person a reasonable opportunity to make written submissions or be heard on the proposal to decline the registration.
- (5) If the Registrar declines a person's registration, the Registrar must—
- (a) give the person written notice of the decision; and
 - (b) refund to the safety auditor any fee paid for the registration.
- (6) The Registrar's grounds for deciding on a matter under subclause (2) or (3) may be informed by—
- (a) the views of the safety auditor that issued the adventure activity operator's current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of his or her functions under the Act.

8 Offence to provide or offer to provide adventure activity unless registered or exempt

- (1) An adventure activity operator must not provide an adventure activity to a participant unless, when the activity is offered,—
- (a) the operator is registered to provide it; or
 - (b) the operator holds an exemption from the requirement to be registered granted by WorkSafe under section 220 of the Act.
- (2) An adventure activity operator must not offer to provide an adventure activity to the public unless, when the activity is offered,—
- (a) the operator is registered to provide it; or
 - (b) the operator has—

- (i) engaged a safety auditor to conduct a safety audit under regulation 6 within a specified time that expires before the date on which the activity is offered; and
 - (ii) provided the safety auditor with the information required by regulation 6(1)(c); and
 - (iii) included in any publicity or documentation relating to the offer a statement that the activity offered will be provided only if the operator is registered to provide it, or is exempt from the requirement to be registered, on the date on which the activity is due to be provided; or
- (c) the operator holds an exemption from the requirement to be registered granted by WorkSafe under section 220 of the Act.
- (3) A person who contravenes subclause (1) or (2) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: SR 2011/367 r 7

Safety auditors

9 WorkSafe may recognise safety auditors

- (1) WorkSafe may, on written application, recognise a person or an organisation as a safety auditor if it is satisfied that—
 - (a) the person or organisation has the appropriate experience and qualifications to carry out the proposed audits; and
 - (b) the person or organisation is likely to carry out the audits in a way that is objective and that promotes safety and the public interest; and
 - (c) the person or organisation is unlikely to have a conflict of interest that cannot be appropriately managed in carrying out the audits and in doing anything else that the person or organisation does or is likely to do; and
 - (d) it is otherwise appropriate to recognise the person or organisation as a safety auditor.
- (2) If WorkSafe grants recognition under subclause (1), it must give written notice to the person or organisation that he, she, or it is recognised as a safety auditor and specify—
 - (a) the period for which the person or organisation is recognised; and
 - (b) the conditions (if any) imposed under regulation 10 on that recognition.
- (3) If WorkSafe declines to grant recognition under subclause (1), it must give written notice of the decision to the person or organisation.

- (4) Recognition may be renewed under this regulation as if it were a new recognition.

Compare: SR 2011/367 r 11

10 Conditions of recognition

- (1) WorkSafe may, when granting a person or an organisation recognition as a safety auditor,—
- (a) impose any conditions of recognition that it considers are required in the interests of safety:
 - (b) impose a condition of recognition that limits the safety auditor to only specified locations or types of adventure activity or equipment.
- (2) WorkSafe may withdraw a condition of recognition by giving written notice to the safety auditor that the condition has been withdrawn.
- (3) A safety auditor must comply with the conditions of the auditor's recognition.

Compare: SR 2011/367 r 12

11 Withdrawal of recognition

- (1) WorkSafe may withdraw recognition of a safety auditor if it is satisfied on reasonable grounds that—
- (a) the safety auditor has breached a condition of the auditor's recognition;
or
 - (b) it is in the interests of safety to withdraw the recognition.
- (2) Before withdrawing recognition of a safety auditor, WorkSafe must give the safety auditor a reasonable opportunity to make written submissions or to be heard on the proposal to withdraw the safety auditor's recognition.
- (3) If WorkSafe withdraws recognition under subclause (1), it must give written notice to the safety auditor that his, her, or its recognition has been withdrawn.

Compare: SR 2011/367 r 13

12 Functions of safety auditors

The functions of a safety auditor are—

- (a) to provide safety audits of an adventure activity operator's compliance with the 1 or more safety audit standards that apply to the adventure activities that the operator provides; and
- (b) to issue safety audit certificates to adventure activity operators who pass safety audits, subject to appropriate conditions (if any); and
- (c) to provide copies of safety audit certificates and related information to the Registrar so that adventure activity operators are registered; and
- (d) to pay the fee for registration for an adventure activity operator during the period for which an audit is valid; and

- (e) to monitor adventure activity operators for compliance with conditions of safety audit certificates that the auditor issues; and
- (f) to provide the Registrar of adventure activities with the auditor's views on any matter in regulation 7(2) or (3) or 18(1)(b) or (c) or (2) that may constitute grounds for the Registrar to make a decision on the matter.

Compare: SR 2011/367 r 10

Recognised Registrar

13 WorkSafe may recognise Registrar

- (1) WorkSafe may, on written application, recognise a person or an organisation as the recognised Registrar if it is satisfied that—
 - (a) the person or organisation is likely to carry out registration in a way that is objective and that promotes safety and the public interest; and
 - (b) the person or organisation is unlikely to have a conflict of interest that cannot be appropriately managed in carrying out registration and in doing anything else that the person or organisation does or is likely to do; and
 - (c) it is otherwise appropriate to recognise the person or organisation as the Registrar.
- (2) If WorkSafe grants recognition under subclause (1), it must give written notice to the person or organisation that he, she, or it is recognised as the Registrar of adventure activities and state—
 - (a) the period for which the person or organisation is recognised; and
 - (b) the conditions (if any) imposed under regulation 14 on that recognition.
- (3) If WorkSafe declines to grant recognition under subclause (1), it must give written notice to the person or organisation of that decision.
- (4) Recognition may be renewed under this regulation as if it were a new recognition.

Compare: SR 2011/367 r 17

14 Conditions of recognition

- (1) WorkSafe may, when granting a person or an organisation recognition as the Registrar of adventure activities, impose any conditions of recognition that it considers are required in the interests of safety.
- (2) WorkSafe may withdraw a condition of recognition by giving written notice to the recognised Registrar that the condition has been withdrawn.
- (3) The recognised Registrar must comply with any conditions of recognition.

Compare: SR 2011/367 r 18

15 Withdrawal of recognition

- (1) WorkSafe may withdraw the recognised Registrar's recognition if it is satisfied on reasonable grounds that—
 - (a) the recognised Registrar has breached a condition of the recognition; or
 - (b) it is in the interests of safety to withdraw the recognition.
- (2) Before withdrawing the recognised Registrar's recognition, WorkSafe must give the recognised Registrar a reasonable opportunity to make written submissions or to be heard on the proposal to withdraw recognition.
- (3) If WorkSafe withdraws recognition under subclause (1), it must give written notice to the recognised Registrar that his, her, or its recognition has been withdrawn.

Compare: SR 2011/367 r 19

*Registration of adventure activity operators***16 Functions and powers of Registrar**

The functions and powers of the Registrar of adventure activities are—

- (a) to keep and maintain the public register of adventure activity operators under regulation 17; and
- (b) to cancel or suspend the registration of adventure activity operators under regulation 18 in appropriate situations.

Compare: SR 2011/367 r 14

17 Register of adventure activity operators

- (1) The Registrar of adventure activities must keep and maintain a public register of adventure activity operators who are authorised to provide adventure activities.
- (2) The register must record the following for each adventure activity operator:
 - (a) the operator's full name;
 - (b) a description of the adventure activities that the operator is authorised to provide;
 - (c) the address of each place of work at which the operator provides the adventure activities;
 - (d) if the operator provides the adventure activities through a business or another operation, any legal name or trading name of the business or operation;
 - (e) the period for which the operator is registered, being the period for which the operator's current safety audit certificate is valid;
 - (f) any period for which registration is suspended under regulation 18(2):

- (g) if registration is cancelled under regulation 18(1) or (2), the date of cancellation.
- (3) The information recorded on the register must be available for inspection, free of charge, on an Internet site maintained by or on behalf of WorkSafe.
- (4) The fee payable to the Registrar for registration as an adventure activity operator is \$100 (excluding goods and services tax) for each full or partial year of registration.
- (5) The Registrar must register an operator, and keep the operator registered, regardless of whether the safety auditor who is liable for the related registration fee under regulation 6(3)(c) has paid the fee.

Compare: SR 2011/367 r 15

18 Cancellation or suspension of registration

- (1) The Registrar must cancel a person's registration as an adventure activity operator if the Registrar is satisfied on reasonable grounds that—
 - (a) the person was registered by mistake; or
 - (b) the person provided false information or evidence to obtain the person's current safety audit certificate; or
 - (c) the person is not an adventure activity operator.
- (2) The Registrar must cancel a person's registration as an adventure activity operator, or suspend the registration for any period that the Registrar thinks fit, if the Registrar is satisfied on reasonable grounds that—
 - (a) the person is unfit to be registered because of the improper way in which the person has provided adventure activities; or
 - (b) the person has not complied with a condition of the person's current safety audit certificate; or
 - (c) the person's failure to safely provide adventure activities, so far as is reasonably practicable, has endangered, or may have endangered, a person's life; or
 - (d) the person has, while the requirement in regulation 8(1)(a) applied, provided adventure activities that the person was not registered to provide.
- (3) Before cancelling or suspending a person's registration, the Registrar must give the person a reasonable opportunity to make written submissions or to be heard on the proposal to cancel or suspend the registration.
- (4) The Registrar must, if cancelling or suspending a person's registration, give a written notice to the person that—
 - (a) states that the person's registration as an adventure activity operator has been cancelled or suspended; and
 - (b) for a suspension, specifies the period for which the registration is suspended.

- (5) The Registrar's grounds for deciding on a matter in subclause (1)(b) or (c) or (2) may be informed by—
- (a) the views of the safety auditor that issued the adventure activity operator's current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of his or her functions under the Act.

Compare: SR 2011/367 r 16

Safety audit standards

19 Publication of safety audit standards

- (1) WorkSafe must develop, and continue to review, 1 or more safety audit standards.
- (2) WorkSafe may publish a safety audit standard, or a change to a safety audit standard, by notice in the *Gazette*.
- (3) Safety audit standards must specify standards or requirements with which adventure activity operators must comply to reduce risks to health and safety when an operator provides adventure activities.
- (4) Safety audit standards must include standards or requirements to manage the risks of drug and alcohol use by operators, employees, or other persons through whom adventure activities are provided.
- (5) Different safety audit standards may apply to different types of adventure activities that operators provide.

Compare: SR 2011/367 r 20

Revocation

20 Revocation

The Health and Safety in Employment (Adventure Activities) Regulations 2011 (SR 2011/367) are revoked.

Schedule 1 Transitional, savings, and related provisions

r 5

Part 1 Provisions relating to these regulations as made

1 Interpretation

In this schedule, **2011 regulations** means the Health and Safety in Employment (Adventure Activities) Regulations 2011.

Registered adventure activity operators

2 Savings provision relating to registered adventure activity operators

- (1) This clause applies to a person who, immediately before the commencement of these regulations, was registered as an adventure activity operator under regulation 6 of the 2011 regulations.
- (2) On and after the commencement of these regulations, the person continues to hold that registration and must be treated as if the person were registered under regulation 7.

Existing safety audit certificates

3 Savings provision relating to existing safety audit certificates

- (1) This clause applies to a safety audit certificate issued to an adventure activity operator under regulation 5(4) of the 2011 regulations and that is valid immediately before the commencement of these regulations.
- (2) On and after the commencement of these regulations, the safety audit certificate must be treated as if it were issued under regulation 6(3) and continues in force for the remaining period for which it is valid.

Recognised safety auditors

4 Savings provision relating to recognised safety auditors

- (1) This clause applies to a person or an organisation who, immediately before the commencement of these regulations, was recognised by WorkSafe as a safety auditor in accordance with regulation 11 of the 2011 regulations.
- (2) On and after the commencement of these regulations,—
 - (a) the person or organisation continues in that role and must be treated as if he, she, or it were recognised as a safety auditor under regulation 9; and
 - (b) any conditions imposed on that recognition under regulation 12 of the 2011 regulations continue to apply to the person or organisation.

Register of adventure activities

5 Savings provision relating to register of adventure activity operators

- (1) This clause applies to the register of adventure activity operators kept under regulation 15 of the 2011 regulations.
- (2) On and after the commencement of these regulations, the register must be treated as if it were kept under regulation 17.

*Recognised Registrar***6 Savings provision relating to recognised Registrar**

- (1) This clause applies to a person or an organisation who, immediately before the commencement of these regulations, was recognised by WorkSafe as the Registrar in accordance with regulation 17 of the 2011 regulations.
- (2) On and after the commencement of these regulations,—
 - (a) the person or organisation continues in that role and must be treated as if he, she, or it were recognised by WorkSafe under regulation 13; and
 - (b) any conditions imposed on that recognition under regulation 18 of the 2011 regulations continue to apply to the person or organisation.

*Existing safety audit standards***7 Savings provision relating to safety audit standards**

- (1) This clause applies to a safety audit standard that was developed and published by WorkSafe under regulation 20 of the 2011 regulations and that applies immediately before the commencement of these regulations.
- (2) On and after the commencement of these regulations, the standard continues to apply and must be treated as if it were developed and published by WorkSafe under regulation 19.

Schedule 2

Activities referred to in definition of adventure activity

r 4(1)(b)

Note: Each activity listed in this schedule is an example of an adventure activity, but only to the extent that regulation 4(1)(a) applies to the activity.

Abseiling (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 the following:

(a) skiing:

(b) snowboarding

Michael Webster,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Health and Safety at Work (Adventure Activities) Regulations 2016 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Education and Training Act 2020 (2020 No 38): section 668