

INTRODUCTION

The Activity Centres (Young Persons' Safety) Act 1995 (the "1995 Act") was introduced following the Lyme Bay canoeing tragedy, in which four young people at a commercial adventure activities centre died during a sea canoeing expedition. The 1995 Act provides for the detail of a licensing regime for adventure activities to be set out in secondary legislation and the current regulations are the Adventure Activities Licensing Regulations 2004 (the "2004 Regulations").

The legislation is aimed at commercial providers of outdoor adventure activities and not at private members' clubs. As a result of RYA pressure during the passage of the Bill through Parliament, bona fide non-profit making clubs providing instruction to their own members were excluded from the application of the legislation. However, under certain circumstances when providing instruction or leadership training to young non-members, a club may need to obtain a licence from the Adventure Activities Licensing Authority.

The following guidance has been produced to assist RYA affiliated clubs and other organisations and RYA Recognised Training Centres in deciding whether or not they need to hold an Adventure Activities Licence.

ACTIVITY CENTRE LICENSING

The 2004 Regulations provide that a person who provides facilities for adventure activities is required to hold a licence if that person provides such facilities in return for payment; or is a local authority and provides the facilities to an educational establishment in respect of the pupils of such an establishment.

Facilities for adventure activities are defined as being any facilities which consist of, or include, some element of instruction or leadership given to one or more young persons [i.e. under 18] in connection with their engagement in an adventure activity (other than instructions given solely in connection with the supply of equipment for use in such an activity).

Adventure activities are caving, climbing, trekking or watersports. "**Watersports**" are defined as including the use of canoes, kayaks or similar craft propelled or steered by paddles held in the hand, rafts, sailing boats, windsurfers and sailing dinghies but excluding the use of powerboats and rowing-boats propelled or steered by oars. Craft that are subject to certification pursuant to the Merchant Shipping Act 1995 (or any regulation made under it) also fall outside the scope of the 2004 Regulations.

Where a person provides those facilities at or from more than one activity centre, and operates those activity centres at the same time throughout any period of 28 days or more, a separate licence is required for each centre.

It is an offence for a person to do anything for which a licence is required, if they do not hold a licence, punishable by up to two years imprisonment and/or an unlimited fine.

EXCLUDED ACTIVITIES

It is not necessary for a person to hold an adventure activities licence if the facilities for adventure activities are provided:

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

A “**voluntary association**” is defined as being an association, club, society, organisation or other body (whether corporate or unincorporate) which provides facilities to its members and is not a business, or part of a business, conducted for profit.

A “**member**” in relation to such a voluntary association excludes a person who is made a member solely in connection with the sale to them by the association of a course of instruction.

Many club activities will therefore fall within the scope of this exclusion and will not give rise to a need for the club to obtain an adventure activities licence.

Also excluded from the licensing regime are watersports on inland waters where no part of the water is more than 50m from land and the surface is not made turbulent because of weirs, rapids, waterfalls, or fast flowing currents (referred to in the flow chart below as “**placid and confined inland waters**”).

In addition, the use of craft that are subject to certification pursuant to the Merchant Shipping Act 1995 (or any regulation made under it) falls outside the scope of the adventure activities licensing regime.

TEMPORARY MEMBERSHIP OF A VOLUNTARY ASSOCIATION

The 2004 Regulations require that an association that provides facilities for adventure activities to individuals who are made members solely in connection with the sale to them by the association of a course of instruction must hold an adventure activities licence.

Many clubs, however, grant temporary membership to individuals who may then wish to take part in club training activities during the period of their temporary membership and the 2004 Regulations do not provide specific criteria for assessing whether or not such temporary membership is “solely in connection with the sale ... by the association of a course of instruction.”

Each case would be considered on its individual circumstances, and there are no hard and fast criteria. However, if a club satisfies most of the following criteria then it may be able to demonstrate that its temporary members are “members” for the purposes of the 2004 Regulations:

1. The club is constituted and run as a non-profit making private members’ sports club;
2. The genuine object of granting temporary membership is to encourage new membership and any training activity that such temporary members take part in is not a commercial side line to support other club activities;
3. The scale of the training activity is proportionate to the size of the club, the size of the cadet or junior section (if any) and the capacity of the club to take in more cadet or junior members;
4. Temporary members are actively encouraged to take part in other club activities and to convert to full (or cadet/junior) membership when the temporary membership expires;
5. The course fee is set on a cost-recovery basis, plus a reasonable margin for club overheads;
6. The period of temporary membership lasts for significantly longer than the duration of any training course that the temporary member may take part in.

RYA RECOGNISED TRAINING CENTRES

The use of craft that are subject to certification pursuant to the Merchant Shipping Act 1995 (or any regulation made under it) falls out with the definition of “watersports” and thus outside the scope of the 2004 Regulations.

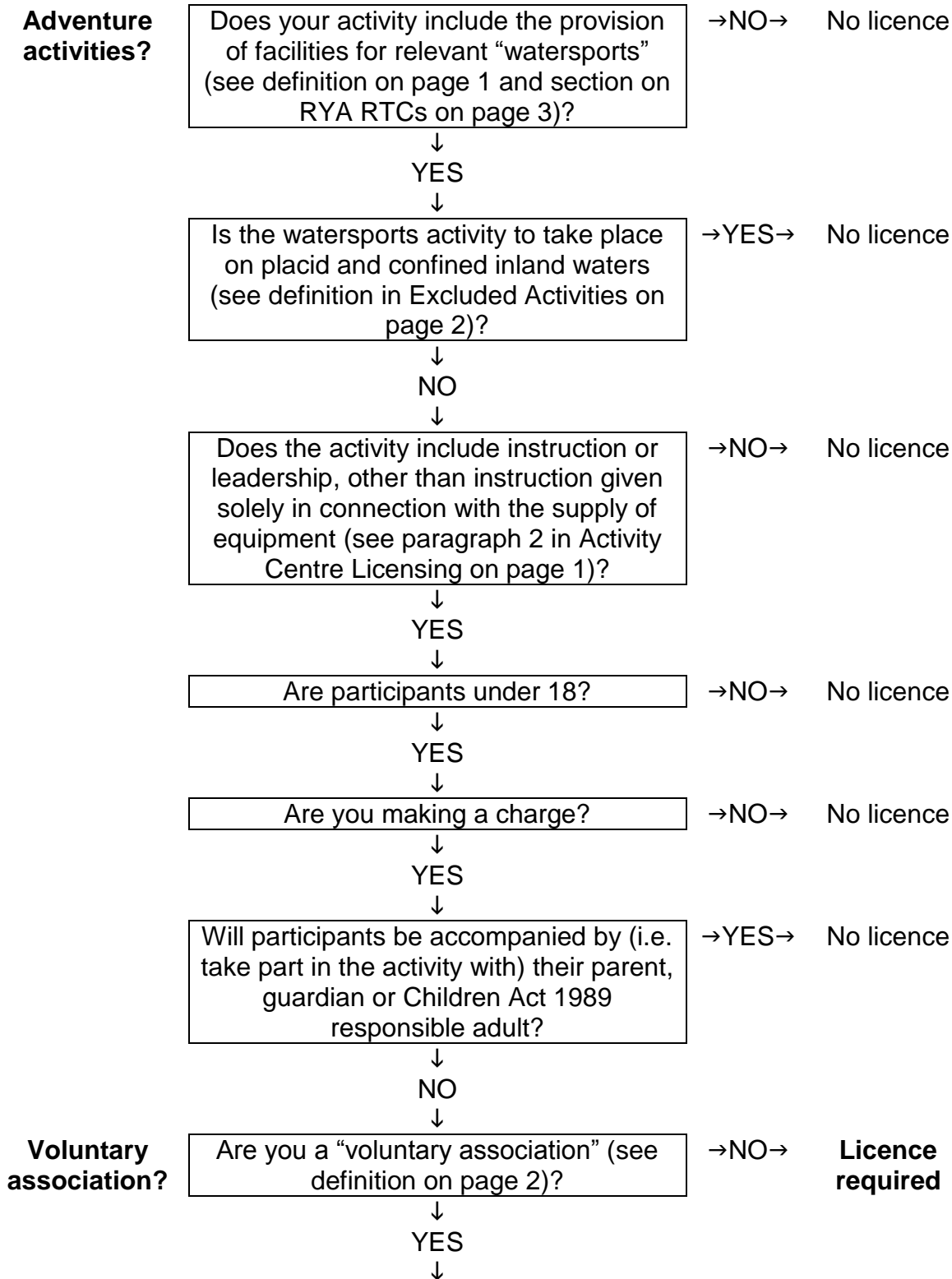
As a consequence of the Merchant Shipping (Load Line) Regulations 1998, the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 and the Merchant Shipping (Boatmasters’ Qualifications, Crew and Hours of Work) Regulations 2015 (together the “merchant shipping regulations”), sailing boats, windsurfers and sailing dinghies etc. operated commercially (i.e. in exchange for payment) are subject to some form of certification pursuant to regulations made under the Merchant Shipping Act 1995.

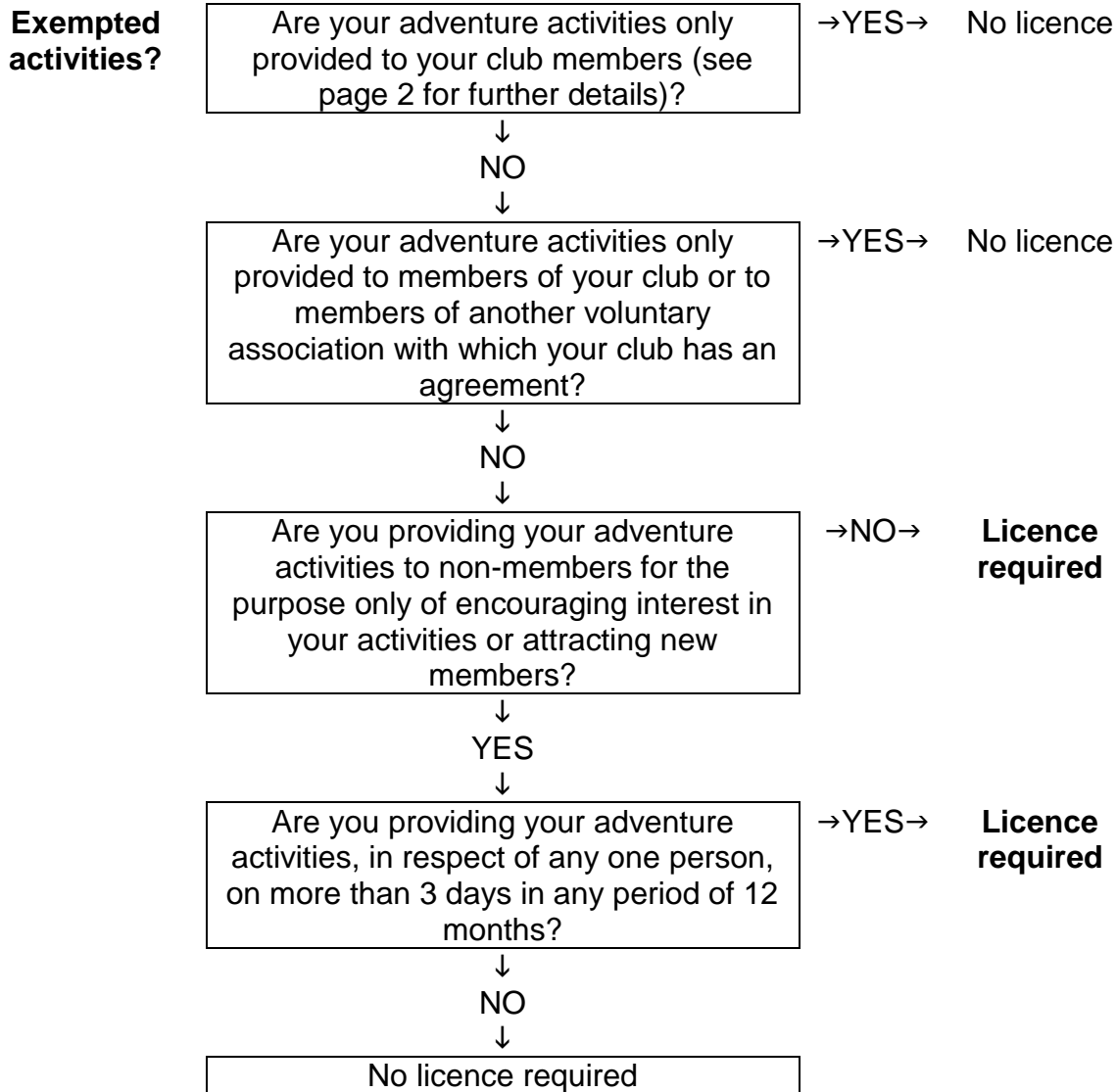
In accordance with an agreement entered into between the RYA and the Maritime & Coastguard Agency in 2012, certification by the RYA of an RYA Recognised Training Centre under the RYA’s Conditions of Recognition for its small boat scheme is deemed to be equivalent to certification under the merchant shipping regulations.

As a consequence, small boat training activity delivered commercially by an RYA Recognised Training Centre in accordance with the RYA’s Conditions of Recognition is not considered to be “watersports” for the purpose of the 2004 Regulations. Such activity thus falls outside the scope of the 2004 Regulations and the activity provider is not required to hold an adventure activities licence.

DO YOU NEED A LICENCE?

We have produced a flow chart to help you decide whether you need to apply for an adventure activities licence in order to offer training courses in dinghy sailing and windsurfing (the licensing system does not apply to powerboat training courses). This flow chart is only a guideline – it is the activity provider’s responsibility to determine whether it needs a licence.





If your activities require the club to hold an adventure activities licence, you should contact the Adventure Activities Licensing Service.

Further information is available from the Adventure Activities Licensing Service by telephone on 029 2075 5715, by email at info@aals.org.uk or via their website at www.aals.org.uk

Alternatively, please contact the RYA Legal Team by telephone on 023 8060 4223 or by email at legal@rya.org.uk

RYA Responsibility Statement:

The RYA Legal Team provides generic legal advice for RYA members, affiliated clubs and Recognised Training Centres. The information contained in this Guidance represents the RYA's interpretation of the law as at the date of this edition. The RYA takes all reasonable care to ensure that the information contained in this Guidance is accurate and that any opinions, interpretations and guidance expressed have been carefully considered in the context in which they are expressed. However, before taking any action based on the contents of this Guidance, readers are advised to confirm the up to date position and to take appropriate professional advice specific to their individual circumstances.