



Health and Safety at Work (Adventure Activities) Amendment Regulations 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 7th day of August 2023

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 211 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 sections 217(1) and 219(1) of that Act.

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Regulations

1 Title

These regulations are the Health and Safety at Work (Adventure Activities) Amendment Regulations 2023.

2 Commencement

These regulations come into force on 1 April 2024.

3 Principal regulations

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

4 New subpart 1 heading in Part 2 inserted

After the Part 2 heading, insert:

Subpart 1—Registration of adventure activity operators

5 Cross-heading above regulation 6 replaced

Replace the cross-heading above regulation 6 with:

Registration process

6 Regulation 6 amended (Requirement for adventure activity operator to pass safety audit)

- (1) In regulation 6, replace “the operator” with “the person” in each place.
- (2) In regulation 6(1), replace “an adventure activity operator” with “a person”.
- (3) In regulation 6(1)(a), replace “the operator’s” with “the person’s proposed”.
- (4) Revoke regulation 6(1)(c).
- (5) In regulation 6(3), replace “adventure activity operator” with “person”.
- (6) Replace regulation 6(3)(b) with:
 - (b) provide the person with a copy of—
 - (i) any audit report relating to the safety audit; and
 - (ii) any other audit-related information needed for the person to apply to the Registrar for registration.
- (7) Revoke regulation 6(3)(c).
- (8) Revoke regulation 6(5).

7 New regulations 6A and 6B inserted

After regulation 6, insert:

6A Application for registration

- (1) A person to whom a safety audit certificate is issued under regulation 6(3)(a) may apply for registration as an adventure activity operator authorised to provide 1 or more of the adventure activities specified in the certificate.
- (2) An application under subclause (1) must—
 - (a) be made to the Registrar in the manner and form required by the Registrar; and
 - (b) be accompanied by the fee specified in regulation 17(4).
- (3) The application must contain the following information:
 - (a) the applicant's full name;
 - (b) a postal or email address for communications;
 - (c) if the applicant will provide the adventure activities through a business or another operation, any legal name and trading name of the business or operation;
 - (d) a description of the adventure activities the applicant proposes to provide;
 - (e) the location of each workplace at which the applicant will provide the adventure activities;
 - (f) an estimate of the number of people that the applicant anticipates will participate in the adventure activities each year;
 - (g) a copy of the applicant's safety audit certificate;
 - (h) a copy of any audit report relating to the safety audit the applicant passed to obtain the certificate.

6B Registrar may request additional information

- (1) On receiving an application for registration, the Registrar may ask an applicant to provide any additional information that the Registrar reasonably considers necessary to determine the application.
- (2) A request must—
 - (a) be in writing; and
 - (b) specify—
 - (i) the additional information required; and
 - (ii) the date by which the applicant must provide the information (which must be at least 28 days after the date of the request).
- (3) If the applicant does not provide the information requested by the specified date, the Registrar may refuse to grant the application for registration.
- (4) The Registrar may make more than 1 request.

8 Regulation 7 replaced (Registration of adventure activity operator)

Replace regulation 7 with:

7 Registration decision

- (1) The Registrar must register an applicant as an adventure activity operator authorised to provide the adventure activities to which their application relates if satisfied that—
 - (a) the applicant has applied in accordance with these regulations; and
 - (b) the applicant is able to comply with any conditions of registration that the Registrar proposes to impose on the registration.
- (2) Subclause (1) is subject to subclauses (3) and (4).
- (3) The Registrar must refuse to register an applicant if the Registrar is satisfied on reasonable grounds that—
 - (a) the activities the applicant is seeking registration to provide are not adventure activities; or
 - (b) the applicant is unfit to be registered because of the improper way in which the applicant previously provided adventure activities.
- (4) The Registrar may refuse to register an applicant if the Registrar is satisfied on reasonable grounds that—
 - (a) the applicant has given information that is false or misleading in a material particular, or failed to give any material information that they should have given, when—
 - (i) obtaining their safety audit certificate; or
 - (ii) applying for registration; or
 - (b) the applicant has not complied with a condition of their current safety audit certificate or any previous certificate; or
 - (c) the applicant has not complied with a condition imposed on any previous registration; or
 - (d) the applicant'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
 - (e) the applicant has previously provided adventure activities that they needed to be registered to provide without being registered to provide the activities; or
 - (f) the applicant may not safely provide 1 or more of the adventure activities covered by the registration, so far as is reasonably practicable.
- (5) The Registrar's reasons for deciding on a matter under subclause (1)(b), (3), or (4) may, without limitation, be informed by—

- (a) the views of the safety auditor who issued the applicant's current safety audit certificate; or
- (b) the views of an inspector resulting from the exercise of their functions under the Act.

7A Decision to grant registration: process

- (1) If the Registrar grants an application for registration under regulation 7(1), the Registrar must—
 - (a) give the applicant written notice that they have been registered as an adventure activity operator; and
 - (b) update the register to record—
 - (i) that the applicant is registered as an adventure activity operator; and
 - (ii) the information specified in regulation 17(2) in respect of this adventure activity operator.
- (2) A notice under subclause (1)(a) must state—
 - (a) the term for which the operator is registered; and
 - (b) the adventure activities that the operator is registered to provide; and
 - (c) the conditions (if any) imposed under regulation 7C on the operator's registration.

7B Decision to refuse registration: process

- (1) If the Registrar proposes to refuse to register an applicant, the Registrar must give the applicant a written notice—
 - (a) informing the applicant of the reasons for the proposed decision; and
 - (b) inviting the applicant to make a submission to the Registrar in relation to the proposed decision by a specified date (which must be at least 28 days after the Registrar gives the notice).
- (2) After the date specified in the notice, the Registrar must—
 - (a) consider any submission the applicant has made; and
 - (b) decide whether to register the applicant; and
 - (c) within 14 days after making the decision, give the applicant written notice of the decision, including the reasons for the decision.

*Conditions of registration***7C Conditions of registration**

- (1) The Registrar may, at any time,—
 - (a) impose conditions of registration on a registered operator's registration; or

- (b) vary a registered operator's existing conditions of registration.
- (2) The Registrar's power under subclause (1) may be exercised to impose any conditions, and make any variations to existing conditions, that the Registrar considers are required in the interests of safety.
- (3) The Registrar must follow the process in regulation 7E in respect of any conditions of registration imposed or any variations to existing conditions.
- (4) The Registrar's reasons for deciding on a matter under subclause (1) or (2) may, without limitation, be informed by—
 - (a) the views of the safety auditor who issued the operator's current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of their functions under the Act.

7D Subject matter of conditions of registration

Conditions of registration under these regulations may, without limitation,—

- (a) relate to 1 or more of the following:
 - (i) the types of adventure activity the operator may provide;
 - (ii) how the operator must provide an adventure activity;
 - (iii) the circumstances in which the operator may or may not provide an adventure activity;
 - (iv) the provision of information to the Registrar; and
- (b) replicate, or relate to matters covered by, conditions of the operator's safety audit certificate.

7E Process for conditions imposed or varied in interests of safety

- (1) If the Registrar proposes to impose or vary conditions of registration under regulation 7C(1), the Registrar must give the registered operator—
 - (a) a written notice informing the operator of—
 - (i) the changes the Registrar proposes to make to the operator's conditions of registration; and
 - (ii) the Registrar's reasons for making those changes; and
 - (b) a reasonable opportunity to make a submission on the proposed changes.
- (2) The Registrar must, after providing the operator with a reasonable opportunity to make a submission,—
 - (a) consider any submission the operator has made; and
 - (b) decide whether to make changes to the operator's conditions of registration (which may be different to the changes originally proposed by the Registrar).

- (3) Within 14 days after making a decision under subclause (2)(b), the Registrar must give the operator written notice of the decision that—
- (a) sets out the changes to the operator’s conditions of registration; and
 - (b) states the reasons for the decision; and
 - (c) specifies the date on which those changes take effect (which must not be earlier than the date on which the operator is given written notice).

7F Withdrawal and error correction

- (1) The Registrar may, at any time,—
- (a) withdraw a condition of registration;
 - (b) vary a condition of registration to correct an error or omission.
- (2) If the Registrar decides to withdraw or vary a condition under subclause (1), the Registrar must give the registered operator written notice—
- (a) informing the operator of the Registrar’s decision; and
 - (b) specifying the date on which the withdrawal or variation takes effect (which must not be before the date on which the operator is given written notice under this subclause); and
 - (c) setting out the conditions the registration will be subject to after the changes take effect.
- (3) The Registrar’s reasons for deciding on a matter under subclause (1) may, without limitation, be informed by—
- (a) the views of the safety auditor who issued the operator’s current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of their functions under the Act.

Term of registration

7G Term of registration

- (1) Registration as an adventure activity operator takes effect on the day it is granted and, subject to regulations 7L, 7M, and 7O, expires at the end of the period for which the related safety audit is valid as specified in the registration holder’s safety audit certificate (*see* regulation 6(3)(a)(ii)).
- (2) The expiry date of a registration as an adventure activity operator does not change if the related safety audit certificate is withdrawn or the safety audit otherwise ceases to be valid before the end of the period specified in the safety audit certificate.

*Changes to existing registration***7H Application for authorisation to provide additional adventure activity**

- (1) A registered operator may apply for authorisation to provide an additional type of adventure activity (an **additional adventure activity**) under the operator's current registration until the expiry date of that registration.
- (2) Subject to subclause (3), regulations 6A, 6B, and 7 apply to the application as if it were an application for registration to provide the additional adventure activity.
- (3) Regulation 6A, 6B, and 7 apply to the application—
 - (a) as if—
 - (i) references to an application for registration were references to an application to add an additional adventure activity to the applicant's registration; and
 - (ii) the applicant was not required to pay the fee specified in regulation 17(4); and
 - (iii) the applicant was required to provide the information specified in regulation 6A(3) in respect of the additional adventure activity (including a copy of the safety audit certificate that covers the additional adventure activity and any related safety audit report); and
 - (iv) the Registrar was additionally required to refuse the application under regulation 7(3) if satisfied, on reasonable grounds, that the applicant's current safety audit certificate—
 - (A) does not cover provision of the additional adventure activity; or
 - (B) will not cover the additional adventure activity for the entire period from the date the activity is added to the applicant's registration to the date the applicant's registration expires; and
 - (v) non-compliance with conditions imposed on the applicant's current registration was a ground for refusing to add an additional adventure activity under regulation 7(4)(c) (in addition to non-compliance with conditions imposed on previous registrations); and
 - (b) with any other necessary modifications.

7I Application to amend registration

- (1) The Registrar may, on application by a registered operator, amend the applicant's registration (for example, by changing the location where the applicant provides an adventure activity) if—

- (a) the amendment relates to a type of adventure activity that the applicant is authorised to provide under their registration; and
 - (b) the applicant's current safety audit certificate covers provision of the adventure activity in accordance with the amendment.
- (2) An application under subclause (1)—
- (a) must be made to the Registrar in the manner and form required by the Registrar; and
 - (b) may be rejected by the Registrar if it is not made in accordance with those requirements.
- (3) The Registrar may refuse to amend the applicant's registration if the Registrar is satisfied on reasonable grounds that 1 or more of the grounds in regulation 7(4) apply in respect of the applicant.
- (4) Regulation 7(4) applies to an application to amend a registration—
- (a) as if—
 - (i) regulation 7(4)(a)(ii) related to the applicant's amendment application; and
 - (ii) non-compliance with conditions imposed on the applicant's current registration was a ground for refusing to amend the registration under regulation 7(4)(c) (in addition to non-compliance with conditions imposed on previous registrations); and
 - (b) with any other necessary modifications.
- (5) The Registrar's power to amend a registration under this regulation includes a power to remove an adventure activity from an applicant's registration.
- (6) The Registrar's reasons for deciding on a matter under subclause (1) or (3) may, without limitation, be informed by—
- (a) the views of the safety auditor who issued the applicant's current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of their functions under the Act.

7J Decision to grant application to add activity or amend registration

If the Registrar grants an application under regulation 7H or 7I, the Registrar must—

- (a) give the applicant a written notice that—
 - (i) informs the applicant of the changes to the applicant's registration; and
 - (ii) specifies when those changes take effect (which must not be before the date on which the applicant is given written notice under this subclause); and

- (b) update the register to reflect the changes to the applicant's registration.

7K Decision to refuse application to add activity or amend registration

- (1) If the Registrar proposes to refuse an application under regulation 7H or 7I, the Registrar must give the applicant a written notice—
 - (a) informing the applicant of the reasons for the proposed decision; and
 - (b) inviting the applicant to make a submission to the Registrar in relation to the proposed decision by a specified date (which must be at least 28 days after the Registrar gives the notice).
- (2) After the date specified in the notice, the Registrar must—
 - (a) consider any submission the applicant has made; and
 - (b) decide whether to make the changes to the applicant's registration that the applicant has applied for; and
 - (c) within 14 days after making the decision, give the applicant written notice of the decision, including the reasons for the decision.

Renewal of registration

7L Renewal of registration

- (1) Registration may be renewed on application and, subject to subclause (2), regulations 6 to 7B apply to the renewal in the same way as they apply to an initial application for registration.
- (2) Regulations 6 to 7B apply to applications for renewal—
 - (a) as if—
 - (i) references to an application for registration were references to an application for renewal of registration; and
 - (ii) non-compliance with conditions imposed on the applicant's current registration was a ground for refusing to renew a registration under regulation 7(4)(c) (in addition to non-compliance with conditions imposed on previous registrations); and
 - (iii) the Registrar was additionally required to inform the applicant of variations to conditions of registration under regulation 7A(2)(c); and
 - (b) with any other necessary modifications.
- (3) A registered operator's application to renew their registration must be made before the registration expires.
- (4) If a registered operator applies to renew their registration, the registration is taken to continue in effect from the day it would, apart from this subclause, have expired until the day the operator is given notice of the Registrar's decision on the application.

7M Continuation of registration during review and appeal

- (1) This regulation applies if the Registrar refuses a registered operator's renewal application and the operator applies to WorkSafe to review the Registrar's decision.
- (2) WorkSafe may decide that the operator's registration remains in effect during the review of the refusal decision and any subsequent appeal under regulations 18 to 18D (collectively, the **review process**), even if the registration has already expired or would otherwise have expired during the review process.
- (3) WorkSafe may—
 - (a) decide, under subclause (2), that the operator's registration remains in effect for some or all of the review process; and
 - (b) make more than 1 decision in respect of the same review process; and
 - (c) at any time, withdraw its decision that the operator's registration remains in effect, if satisfied, on reasonable grounds, that it is necessary or desirable to do so in the interests of safety.
- (4) A decision by WorkSafe under subclause (2)—
 - (a) may be made—
 - (i) on the application of the operator who initiated the review process; or
 - (ii) on WorkSafe's own initiative; and
 - (b) must specify when the period during which the operator's registration remains in effect ends (for example, by reference to a date, or to the occurrence of 1 or more events, or both).
- (5) WorkSafe must make a decision on an application under subclause (4)(a)(i) no later than 14 days after receiving the application.

7N Matters that WorkSafe may take into account

- (1) WorkSafe may, when making a decision under regulation 7M, take into account—
 - (a) the Registrar's reasons for refusing the renewal application; and
 - (b) any other relevant matter, including—
 - (i) the views of the safety auditor who issued the applicant's current safety audit certificate; or
 - (ii) the views of an inspector resulting from the exercise of their functions under the Act.
- (2) WorkSafe may require the Registrar to provide it with any information it needs to make its decision.

7O Period that registration remains in effect

- (1) If WorkSafe decides that an operator's registration remains in effect under regulation 7M, the operator's registration is taken to be in effect during the period specified in subclauses (2) and (3).
- (2) The period starts on the later of—
 - (a) the day the registration would have, apart from this regulation, expired; and
 - (b) the time when WorkSafe makes its decision under regulation 7M.
- (3) The period ends—
 - (a) when WorkSafe withdraws its decision under regulation 7M(3)(c) and notifies the operator of its withdrawal decision; or
 - (b) in the circumstances specified by WorkSafe under regulation 7M(4)(b); or
 - (c) when the review process ends (for example, when WorkSafe upholds the Registrar's decision on review and the operator does not lodge an appeal by the end of the time for lodging an appeal, or when the District Court makes a final decision on appeal).

7P Renewal process does not prevent suspension or cancellation

Continuation of a registration after its expiry date under regulation 7L or regulations 7M and 7O does not prevent the Registrar from suspending or cancelling that registration under regulation 7Q or 7S (including on the same grounds that led the Registrar to refuse to renew the operator's registration).

Suspension or cancellation of registration

7Q Suspension or cancellation of registration: grounds

- (1) The Registrar must cancel a registered operator's registration if the Registrar is satisfied on reasonable grounds that—
 - (a) the operator was registered by mistake; or
 - (b) the operator is not an adventure activity operator.
- (2) The Registrar may cancel a registered operator'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 operator gave information that was false or misleading in a material particular, or failed to give any material information that they should have given, when obtaining their—
 - (i) safety audit certificate; or
 - (ii) registration; or

- (b) the operator is unfit to be registered because of the improper way in which the operator has provided adventure activities; or
 - (c) the operator has not complied with a condition of the operator's current—
 - (i) safety audit certificate; or
 - (ii) registration; or
 - (d) the operator's failure to safely provide adventure activities, so far as is reasonably practicable, has endangered, or may have endangered, a person's life; or
 - (e) the operator has previously provided adventure activities that they needed to be registered to provide without being registered to provide the activities; or
 - (f) the operator may not safely provide 1 or more of the adventure activities covered by the registration, so far as is reasonably practicable.
- (3) A suspension under subclause (2) may—
- (a) suspend the operator's registration to provide 1, some, or all of the adventure activities covered by the registration; and
 - (b) be imposed for a period that ends in 1 or both of the following ways:
 - (i) at a specified point in time;
 - (ii) in specified circumstances.
- (4) The Registrar's reasons for deciding on a matter under subclause (1)(b) or (2) may, without limitation, be informed by—
- (a) the views of the safety auditor who issued the operator's current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of their functions under the Act.

7R Suspension or cancellation: process

- (1) If the Registrar proposes to suspend or cancel a registered operator's registration, the Registrar must give the operator a written notice—
- (a) informing the operator of—
 - (i) the reasons for the proposed decision; and
 - (ii) for a proposal to suspend, when the suspension would begin and end; and
 - (b) inviting the operator to make a submission to the Registrar in relation to the proposed decision by a specified date (which must be at least 28 days after the Registrar gives the notice).
- (2) After the date specified in the notice, the Registrar must—
- (a) consider any submission the operator has made; and

- (b) decide whether to suspend or cancel the operator's registration (as applicable).
- (3) Within 14 days after making the decision under subclause (2)(b), the Registrar must give the operator written notice that—
 - (a) states whether the operator's registration as an adventure activity operator has been suspended or cancelled (as applicable); and
 - (b) states the reasons for the decision; and
 - (c) for a suspension, specifies when the suspension begins and ends; and
 - (d) for a cancellation, specifies when the cancellation takes effect.

7S Immediate suspension of registration by Registrar

- (1) The Registrar may immediately suspend a registered operator's registration, without following the procedure in regulation 7R, if satisfied on reasonable grounds that the operator's provision of 1 or more of the adventure activities covered by the registration—
 - (a) may pose an imminent serious risk to the health or safety of any person; and
 - (b) should stop being provided because of this risk.
- (2) An immediate suspension under subclause (1) may—
 - (a) suspend the operator's registration as a whole; or
 - (b) suspend the operator's registration to provide 1 or more of the adventure activities covered by the registration.
- (3) When the Registrar decides to immediately suspend an operator's registration,—
 - (a) the Registrar must, as soon as possible after the decision, give the operator written notice of the suspension and the reasons for it; and
 - (b) the suspension takes effect when the Registrar gives the notice.
- (4) An immediate suspension ends 14 days after the Registrar gives notice under subclause (3) unless, within the 14 day suspension period,—
 - (a) the Registrar gives the operator written notice, under regulation 7R(1), that the Registrar proposes to suspend or cancel the operator's registration; or
 - (b) the Registrar withdraws the immediate suspension.
- (5) If subclause (4)(a) applies, the immediate suspension continues until the Registrar makes a decision about the relevant proposal and gives the operator written notice of that decision under regulation 7R(3).
- (6) The Registrar's reasons for deciding to suspend an operator's registration under subclause (1) may, without limitation, be informed by—

- (a) the views of the safety auditor who issued the operators's current safety audit certificate; or
- (b) the views of an inspector resulting from the exercise of their functions under the Act.

7T Cancellation during period of suspension

Suspension of a registration under regulation 7Q(2) or 7S(1) does not prevent the Registrar from cancelling that registration under regulation 7Q(1) or (2) during the period of the suspension.

Adventure activity operators must be registered

9 Regulation 8 amended (Offence to provide or offer to provide adventure activities unless registered or exempt)

Revoke regulation 8(2)(b)(ii).

10 New regulation 8A and cross-heading inserted

After regulation 8, insert:

Duty to communicate risks

8A Duty to communicate risks associated with adventure activities

- (1) An adventure activity operator must take all reasonable steps to inform a person seeking to participate in an adventure activity that the operator provides of any serious risks to the person's health or safety that the person may be exposed to if the person participates in the adventure activity.
- (2) A person who contravenes this regulation commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

11 New subpart 2 heading in Part 2 inserted

In Part 2, after regulation 8A (as inserted by these regulations), insert:

Subpart 2—Safety auditors, Registrar, and register of adventure activity operators

12 Regulation 9 amended (WorkSafe may recognise safety auditors)

In regulation 9(3), replace “declines” with “refuses”.

13 Regulation 12 amended (Functions of safety auditors)

- (1) In regulation 12(a),—
 - (a) replace “an adventure activity operator's” with “a person's”; and

- (b) replace “operator provides” with “person provides or seeks to provide”.
- (2) In regulation 12(b), replace “adventure activity operators” with “persons”.
- (3) Replace regulation 12(c) with:
 - (c) to give a person who is issued a safety audit certificate any safety audit-related information the person needs to apply to the Registrar for registration; and
- (4) Revoke regulation 12(d).
- (5) Replace regulation 12(f) with:
 - (f) to provide the Registrar with the safety auditor’s views on any matter in regulation 7(1)(b), (3) or (4), 7C(1) or (2), 7F(1), 7I(1) or (3), 7M, 7Q(1)(b) or (2), or 7S(1) where those views are relevant to the Registrar’s decision in respect of the matter; and
 - (g) to provide WorkSafe with the safety auditor’s views on any matter relevant to a review of a decision of the Registrar by WorkSafe under regulations 18A to 18C when requested to do so under regulation 18B(2)(b).

14 Regulation 13 amended (WorkSafe may recognise Registrar)

In regulation 13(3), replace “declines” with “refuses”.

15 Cross-heading above regulation 16 revoked

Revoke the cross-heading above regulation 16.

16 Regulation 16 amended (Functions and powers of Registrar)

- (1) After regulation 16(a), insert:
 - (aa) to determine applications for registration and renewal of registration as an adventure activity operator under regulation 7; and
- (2) In regulation 16(b), replace “regulation 18” with “regulations 7Q and 7S”.
- (3) After regulation 16(b), insert:
 - (c) to make changes to adventure activity operators’ registrations under regulation 7H and 7I in appropriate situations; and
 - (d) to impose, vary, or withdraw conditions of registration under regulations 7C and 7F in appropriate situations; and
 - (e) to monitor adventure activity operators’ compliance with conditions of registration.

17 New cross-heading above regulation 17 inserted

After regulation 16, insert:

Register of adventure activity operators

18 Regulation 17 amended (Register of adventure activity operators)

- (1) In regulation 17(2)(c), replace “address of each place of work” with “location of each workplace”.
- (2) In regulation 17(2)(e), delete “, being the period for which the operator’s current safety audit certificate is valid”.
- (3) In regulation 17(2)(f), replace “18(2)” with “7Q(2) or 7S(1)”.
- (4) In regulation 17(2)(g), replace “18(1) or (2)” with “7Q(1) or (2)”.
- (5) After regulation 17(2)(g), insert:
 - (h) any conditions currently imposed on the operator’s registration.
- (6) Revoke regulation 17(5).

19 Regulation 18 replaced (Cancellation or suspension of registration)

Replace regulation 18 with:

Subpart 3—Review and appeal of registration decisions

Review of registration decisions

18 Reviewable registration decisions

A person may apply to WorkSafe for a review of the following decisions in respect of their registration as an adventure activity operator or their application for registration or renewal of registration as an adventure activity operator:

- (a) a refusal to grant their application for registration or renewal of registration (under regulation 7(3) or (4), including as modified by regulation 7L(2));
- (b) a refusal to allow their registration to remain in effect while a decision to refuse to renew the registration is challenged (under regulation 7M(1));
- (c) a withdrawal of a decision that their registration remains in effect during a review process (under regulation 7M(3)(c));
- (d) a refusal to add an additional adventure activity to their registration (under regulation 7H(1));
- (e) a refusal to amend their registration (under regulation 7I(1));
- (f) a suspension or cancellation of their registration (under regulation 7Q(1) or (2));
- (g) an immediate suspension of their registration (under regulation 7S(1));
- (h) an imposition of a condition of registration on their registration or variation of an existing condition of registration (under regulation 7C(1));
- (i) a withdrawal of a condition imposed on their registration (under regulation 7F(1)(a));

- (j) a variation of a condition imposed on their registration to correct an error or omission (under regulation 7F(1)(b)).

18A Application for review

An application to WorkSafe for a review of a decision must—

- (a) be made in the manner and form required by WorkSafe; and
- (b) identify the decision or decisions to be reviewed; and
- (c) state the grounds for review; and
- (d) include—
 - (i) any submission that the applicant wants WorkSafe to consider; and
 - (ii) if applicable, a description of any action that the applicant has taken in response to the decision; and
- (e) be made within—
 - (i) 28 days after the date on which the Registrar gave written notice of the decision that is to be reviewed; or
 - (ii) any longer period allowed by WorkSafe.

18B Worksafe's actions on receiving application for review

- (1) On receiving an application for review, WorkSafe must send the applicant a written acknowledgement stating when the application was received.
- (2) WorkSafe may request—
 - (a) additional information from the applicant within a specified period (which must be at least 7 days from the date of the request);
 - (b) the safety auditor who issued the relevant safety audit certificate to give their views in relation to any matter relevant to the review.
- (3) The applicant must give WorkSafe the additional information referred to in subclause (2)(a) within the specified period.
- (4) If the applicant does not give WorkSafe the additional information within the specified period, WorkSafe may review the decision on the basis of the information it holds.
- (5) If the safety auditor gives Worksafe their views under subclause (2)(b), WorkSafe must give the applicant—
 - (a) a copy of the safety auditor's views; and
 - (b) an opportunity to comment on the safety auditor's views within a specified period (which must be at least 7 days from the date on which the applicant was given a copy of the views).

18C Review

- (1) WorkSafe must review a decision as soon as practicable after WorkSafe—

- (a) receives an application for review; and
 - (b) is satisfied it has obtained all associated information, views, and comments that may be provided under regulation 18B (if any).
- (2) If it is not practicable for WorkSafe to complete its review within 28 days, WorkSafe must give the applicant a written notice that—
- (a) informs the applicant the review will not be completed within 28 days; and
 - (b) explains why the review is not able to be completed within this period; and
 - (c) provides an estimate of when it will be practicable to complete the review.
- (3) In reviewing the decision, WorkSafe must have regard to—
- (a) any submission by the applicant included in the application for review; and
 - (b) any information relevant to the decision—
 - (i) given to WorkSafe by the applicant in response to a request for additional information under regulation 18B(2)(a); and
 - (ii) given to WorkSafe by a safety auditor in response to a request under regulation 18B(2)(b) (and the applicant's comments on this information, if any); and
 - (iii) given to WorkSafe by the Registrar (or, if WorkSafe is the Registrar, held by WorkSafe in its capacity as the Registrar); and
 - (c) if applicable, any action that the applicant has taken in response to the decision under review.
- (4) After conducting the review, WorkSafe must make a decision—
- (a) confirming the decision under review; or
 - (b) varying the decision under review; or
 - (c) withdrawing the decision under review.
- (5) Within 14 days after making a decision under subclause (4), WorkSafe must give the applicant written notice of the decision, including the reasons for the decision.

Appeals against review decisions

18D Appeal to District Court

- (1) A person who is given notice of a decision under regulation 18C(5) may appeal to the District Court against that decision.

- (2) The appeal must be lodged within 28 days after the date on which the appellant was given notice of the decision, or within any longer period that the court allows.
- (3) The court must inquire into the decision under appeal and may—
 - (a) confirm or vary the decision; or
 - (b) set aside the decision; or
 - (c) set aside the decision and replace it with a decision that the court considers appropriate; or
 - (d) refer the matter back to WorkSafe, directing WorkSafe to reconsider the whole or any specified part of the matter.
- (4) Subject to any order of the court, the decision under appeal continues to have effect pending the determination of the appeal.
- (5) Subclause (4) does not prevent a registration from continuing to have effect after its expiry date under regulation 7L or regulations 7M and 7O.

20 New subpart 4 heading in Part 2 inserted

In Part 2, after regulation 18D (as inserted by these regulations), insert:

Subpart 4—Safety audit standards and declaration of notifiable events

21 New regulations 19A and 19B and cross-heading inserted

After regulation 19, insert:

Declaration of notifiable events

19A Declaration of notifiable incidents

- (1) The following incidents, when they occur in connection with an adventure activity, are declared to be notifiable incidents under section 24(1)(m) of the Act:
 - (a) a natural hazard that, taking into account the hazard's type, severity, and other distinguishing features, is not a hazard routinely encountered during the ordinary course of the adventure activity;
 - (b) entrapment, entanglement, or immobilisation, including while in a vehicle or vessel;
 - (c) a fall from a height;
 - (d) a collision with an object, the ground, or another person;
 - (e) a collision between a vehicle and a person or object (including another vehicle), a vehicle overturning (regardless of which part of the vehicle is against the ground when it comes to rest), or an inrush of water into a vehicle;

- (f) a collision between a vessel and a person or object (other than another vessel) or a vessel rolling (*see also* section 24(1)(l) of the Act);
 - (g) a situation where safety-critical equipment used to provide an adventure activity—
 - (i) fails or malfunctions while in use; or
 - (ii) is defective and at significant risk of failure or malfunction while in use.
- (2) In this regulation,—
- natural hazard** means any atmospheric-, land-, or water-related occurrence (including volcanic activity, landslip, avalanche, rockfall, ice fall, storm, or flooding) the action of which adversely affects a location where an adventure activity is provided
- safety-critical equipment** means equipment used to provide an adventure activity that is critical to maintaining the safety of any person.

19B Declaration of notifiable injury or illness

An injury sustained or illness acquired by a person in connection with an adventure activity that requires, or would usually require, the person to have medical treatment within 48 hours of the injury being sustained or the illness being acquired is declared to be a notifiable injury or illness under section 23(1)(e) of the Act.

22 New subpart 5 heading in Part 2 inserted

In Part 2, after regulation 19B (as inserted by these regulations), insert:

Subpart 5—Revocation

23 Cross-heading above regulation 20 revoked

Revoke the cross-heading above regulation 20.

24 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part set out in the Schedule of these regulations as the last Part; and
- (b) make all necessary consequential amendments.

Schedule 1

New Part 2 inserted into Schedule 1

r 24

Part 2

Provisions relating to Health and Safety at Work (Adventure Activities) Amendment Regulations 2023

8 Interpretation

In this Part,—

existing registration application means an application for registration or renewal of registration under the original regulations where, immediately before the commencement of this clause,—

- (a) the applicant had engaged a safety auditor to conduct a safety audit under regulation 6 of the original regulations in respect of the application; and
- (b) the Registrar had not yet made an associated decision about whether to grant the application under regulation 7 of the original regulations

original regulations means these regulations as in force immediately before the commencement of the Health and Safety at Work (Adventure Activities) Amendment Regulations 2023.

9 Savings provision relating to registered adventure activity operators

- (1) This clause applies to a person who, immediately before the commencement of this clause, was registered as an adventure activity operator under regulation 7 of the original regulations.
- (2) On and after the commencement of this clause, the person continues to hold that registration and, subject to clauses 10 to 14, must be treated as a person registered under regulation 7.

10 Existing registration applications where auditor has applied to Registrar

- (1) This clause applies to an existing registration application if, immediately before the commencement of this clause, the safety auditor has given the Registrar—
 - (a) a copy of the applicant's safety audit certificate; and
 - (b) the information required under regulation 6(3)(b) of the original regulations.
- (2) Where this clause applies to an existing registration application, regulations 6 and 7 of the original regulations continue to apply to the Registrar's determin-

ation of the application (instead of regulations 6 to 7B and 7L to 7P of these regulations).

11 Other existing registration applications

Unless clause 10 applies to an existing registration application, these regulations (as amended) apply to the application and the safety auditor must promptly return any money the applicant has given the safety auditor to pay the fee specified in regulation 17(4).

12 Savings provision relating to unpaid fees

Regulation 17(5) of the original regulations continues to apply in respect of a registration granted or renewed—

- (a) before the commencement of this clause; or
- (b) if clause 10 applied to the associated application for registration or renewal of registration, on or after the commencement of this clause.

13 Savings provision relating to proposals to suspend or cancel registration

Regulation 18 of the original regulations continues to apply to a decision by the Registrar to suspend or cancel a person's registration that is made on or after the commencement of this clause if, before the commencement of this clause, the Registrar has notified the person of the Registrar's proposal to suspend or cancel the person's registration.

14 Savings provision relating to reviews and appeals

Regulations 18 to 18D do not apply to the following decisions of the Registrar:

- (a) a decision made before the commencement of this clause;
- (b) a decision made on or after the commencement of this clause under a provision of the original regulations saved by clause 10(2) or 13.

Rachel Hayward,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 April 2024, amend the Health and Safety at Work (Adventure Activities) Regulations 2016 (the **Adventure Activities Regulations**).

Regulations 1 and 2 give the Title and commencement date of these regulations.

Regulations 6 and 7 amend regulation 6 and insert *new regulations 6A and 6B*.

New regulation 6A requires a person seeking registration as an adventure activity operator to apply to the Registrar of adventure activities (the **Registrar**) directly (instead of the application being made by the safety auditor that the person has engaged) and sets out the requirements for this application.

New regulation 6B allows the Registrar to seek additional information about an application.

The amendments to regulation 6 align this provision with the revised application process and make other minor changes to the provision.

Regulation 8 replaces regulation 7 and inserts *new regulations 7A to 7T*.

New regulation 7 sets out the circumstances in which the Registrar must grant an application for registration and the grounds on which an application may be refused.

New regulations 7A and 7B set out the process the Registrar must follow when granting or refusing to grant an application for registration.

New regulations 7C to 7F allow the Registrar to impose, vary, and withdraw conditions of registration and specify the process the Registrar must follow when doing so.

New regulation 7G specifies how the start and end date for a registration as an adventure activity operator are determined.

New regulations 7H to 7K allow a registered operator to apply to the Registrar to add an additional adventure activity to their registration or to amend their registration and specify the procedures for those applications.

New regulations 7L to 7P provide for registration renewal applications by registered operators.

Under the renewal process an operator's registration remains in effect (even if it would otherwise expire) until the Registrar determines the operator's renewal application. If the Registrar refuses to renew the operator's registration, WorkSafe has a discretion to allow the operator's registration to remain in effect while the Registrar's decision is challenged.

New regulations 7Q and 7R set out the circumstances in which the Registrar may suspend or cancel a registered operator's registration and the process the Registrar must follow when making decisions about suspension or cancellation.

New regulation 7S allows the Registrar to immediately suspend a registered operator's registration without following the process in *new regulation 7R*.

The Registrar may immediately suspend an operator's registration if satisfied on reasonable grounds an adventure activity the operator provides may pose an imminent serious risk to the health and safety of any person and that the activity should therefore stop being provided. An immediate suspension ends after 14 days unless the Registrar withdraws the suspension early or seeks to suspend or cancel the operator's registration under *new regulation 7Q* while the immediate suspension is in place.

New regulation 7T makes it clear that a registration may be cancelled while it is suspended.

Regulation 10 inserts *new regulation 8A*. *New regulation 8A* imposes a duty on adventure activity operators to take all reasonable steps to inform a person seeking to participate in an adventure activity that the operator provides of any serious risks to the participant's health or safety that the participant may be exposed to if they participate in the activity.

Regulation 13 amends regulation 12 to align the functions of safety auditors with other changes made to the Adventure Activities Regulations.

Regulation 16 amends regulation 16 to align the functions and powers of the Registrar with other changes made to the Adventure Activities Regulations.

Regulation 18 amends regulation 17 to align this regulation with other changes made to the Adventure Activities Regulations. This includes a requirement for the Registrar to record any conditions imposed on an adventure activity operator's registration on the public register.

Regulation 19 replaces regulation 18 with *new regulations 18 to 18D*. *New regulations 18 to 18C* allow a person to ask WorkSafe to review specified decisions of the Registrar. *New regulation 18D* allows the person to appeal WorkSafe's decision on review to the District Court.

Regulation 21 inserts *new regulation 19A and 19B*. *New regulations 19A and 19B* declare specified adventure activity-related events to be notifiable incidents under section 24(1)(m) of the Act and notifiable injuries or illness under section 23(1)(e) of the Act.

Regulation 24 amends Schedule 1 of the Adventure Activities Regulations to insert a *new Part 2* that contains transitional and savings provisions relating to amendments made by these regulations. These provisions, amongst other things, make it clear how applications and decision-making processes underway when these regulations come into force must be dealt with.

Regulations 4, 5, 9, 11, 12, 14, 15, 17, 20, 22, and 23 make other minor amendments to the Adventure Activities Regulations to make them easier to navigate and align existing regulations with the new regulations inserted.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 14 June 2022 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <https://www.mbie.govt.nz/dmsdocument/25545-regulatory-impact-statement-strengthening-the-adventure-activities-regulatory-regime-proactiverelase-pdf>
- <https://treasury.govt.nz/publications/informationreleases/ris>

**Health and Safety at Work (Adventure Activities)
Amendment Regulations 2023**

2023/189

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