

Open access and public liability

A guide for people who own and manage access land

**This is not a definitive interpretation of the law.
You may need to take legal advice as necessary.**

This leaflet outlines the law on occupiers' liability, and how it will apply on access land – land subject to the new public access rights under the Countryside and Rights of Way (CROW) Act 2000. We also outline the liability position under the Animals Act 1971.

The cover of the folder that contains this leaflet explains in more detail what CROW access land is, and what people are entitled to do there. If you read that first, it will help you make sense of this leaflet. If you don't have the folder (CAX 150F), the information is on our website www.countryside.gov.uk/widerwelcome/open-access, or you can get a copy from the open access helpline on **0845 100 3298**.

Occupiers' liability

Who is the occupier?

You will normally be the occupier if you are the landowner or farm tenant on access land.

What is occupiers' liability?

It means the scope for you to be sued by someone for injury or damage resulting from the state of the land, or from something done (or not done) on the land. It is regulated by the Occupiers' Liability Acts of 1957 and 1984. You cannot be prosecuted under these Acts, but you can be sued in the civil courts.

Your liability towards your visitors

The Occupiers' Liability Act 1957 sets out the duty of care you owe to your visitors – ie. people you invite or permit to use your land, whether expressly or by implication. Visitors in this sense include the postman or children on a pre-arranged school visit.

You must take reasonable care that these visitors will be reasonably safe doing whatever it is you have invited or permitted them to do on your land. Where adults willingly accept risks on behalf of themselves and anyone immediately in their care (eg. children) you have no duty

to protect them from these risks, and you would not be liable for any damage or injury they sustained as a result. Formal agreements to use land for potentially dangerous activities (such as climbing) often spell this out.

Your liability towards people who are not your visitors

The Occupiers' Liability Act 1984 sets out the duty of care you owe to people you have **not** invited or permitted to be on your land, such as trespassers. Normally, you still owe such people some duty of care if:

- you know there is a danger, and know that people may be in (or come into) the vicinity of the danger – or in either case you have reasonable grounds for believing this to be so; and
- the risk is one against which you may reasonably be expected to offer some protection.

Where these criteria apply, you have to take reasonable care that people do not suffer injury on your land. You may be able to discharge this duty of care by warning people about a danger (eg. with a notice) but this may not always be enough. For example, some extra precautions may be needed if you believe unsupervised children are likely to use your land.

Again, this duty of care does not apply to risks that adults willingly accept on behalf of themselves or those immediately in their care.

Your liability towards people on CROW access land

There is a **reduced** level of liability whenever CROW access rights are in force on your land:

- The higher duty of care under the Occupiers' Liability Act 1957 does **not apply at all** towards people exercising the CROW access rights – though it does still apply as explained above to those you invite or expressly permit to be on the land.
- Even the lower duty of care to non-visitors, under the Occupiers' Liability Act 1984, is **further reduced** as follows:
 - Unless you set out to create a risk, or are reckless about whether a risk is created, you owe no duty and cannot be sued for any damage or injury caused by:
 - any natural feature of the landscape (including any tree, shrub, plant, river, stream, ditch or pond, whether natural or not);
 - or
 - people passing over, under or through any wall, fence or gate, except by proper use of the gate or a stile.
 - Although you could still be sued by someone exercising the CROW access rights in respect of other types of injury or damage,

the court – in deciding whether you owed a duty of care, and if so what duty of care you owed, under the Occupiers' Liability Act 1984 – would be required to have particular regard to:

- the fact that the CROW access rights ought not to place an undue burden (whether financial or otherwise) on you;
- the importance of maintaining the character of the countryside, including features of historic, traditional or archaeological interest; and
- any relevant guidance given by the Countryside Agency under CROW section 20.

Remember – these special liability arrangements apply only while CROW access rights are in force. They don't apply, for example:

- while the CROW access rights are excluded or restricted;
- or
- on land where CROW access rights do not apply at all – even if it has open access under other rights or arrangements.

Liability under the Animals Act 1971

What follows is a brief outline of the main liability provisions of the Animals Act 1971. We have printed relevant extracts from this Act on the back of this leaflet. You should take legal advice as necessary on your liability under this Act.

If one of your animals injures someone or causes damage, you may be liable if:

- it was likely to cause that kind of injury or damage unless restrained, **or**
- any injury or damage it caused was likely to be severe, **and**
- the characteristics of the animal that made this likely are abnormal in that species, or are abnormal in the species except at particular times or in particular circumstances, **and**
- those characteristics were known to you, or to someone who looks after the animal for you.

You do not have to be negligent to be liable under this Act. But you won't be liable if the damage or injury was wholly the fault of the person suffering it, or if they voluntarily accepted the risk of it happening to them. If they were trespassing on the land where the animal was kept, you won't normally be liable, but remember that people are not trespassing while exercising CROW access rights.

There are other provisions in the Animals Act 1971 about **guard dogs** and **dangerous species** (eg lions and tigers): we do not deal with these here.

Further reading

The Countryside Agency, February 2004.
Statutory restrictions on access. CAX 150-4.
Cheltenham.

The Countryside Agency, February 2004.
Positive access management. CAX 150-3.
Cheltenham.



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Extracts from sections 2 and 5 of the Animals Act 1971

Section 2

(1)...

(2) Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, except as otherwise provided by this Act, if: –

- the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and
- the likelihood of the damage or of its being severe was due to characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances; and
- those characteristics were known to that keeper or were at any time known to a person who at that time had charge of the animal as that keeper's servant or, where that keeper is the head of a household, were known to another keeper of the animal who is a member of that household and under the age of sixteen.

Section 5

(1) A person is not liable under sections 2 to 4 of this Act for any damage which is due wholly to the fault of the person suffering it.

(2) A person is not liable under section 2 of this Act for any damage suffered by a person who has voluntarily accepted the risk thereof.

(3) A person is not liable under section 2 of this Act for any damage caused by an animal kept on any premises or structure to a person trespassing there, if it is proved either –

- that the animal was not kept there for the protection of persons or property; or
- (if the animal was kept there for the protection of persons or property) that keeping it there for that purpose was not unreasonable.

(4)...

(5)...

(6)...