

Liability – FAQs

What is occupiers' liability?

It means the scope for the occupier (landowner or farm tenant on access land) 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 (see leaflet on occupiers' liability in the Land Managers Guidance Pack).

How does the right of access affect occupiers' liability?

On access land, occupiers enjoy a reduced level of liability level towards members of the public who are using the right of access. The level of liability will drop below the level that is currently owed towards trespassers.

The higher level of liability that occupiers face towards people they invite or permit to use their land (a duty to take reasonable steps to ensure that they are safe while carrying out permitted activities), including employees like gamekeepers, will remain unchanged.

Occupiers currently have a duty of care to trespassers under the Occupier's Liability Act 1984. This Act requires occupiers to take reasonable steps to any avert danger posed by a known hazard.

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 danger or in either case you have reasonable grounds for believing this to be so
- 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 (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 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)
- People passing over, under or through any wall, fence gate, except by proper use of the gate or style

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 any 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
- any relevant guidance given by the natural England under CROW section 20.

Do the special liability arrangements apply all the time?

The special liability arrangements only apply while CROW access rights are in force. They don't apply while CROW access rights are excluded or restricted, or on land that is excepted land under schedule 1 of CROW

What about animals?

If an animal injures someone or causes damage, then whether or not the injury occurs on CROW access land, the occupier may be liable under the Animals Act 1971 if it can be established that:

1. the animal was likely to cause that kind of injury or damage unless restrained
2. any injury or damage it caused was likely to be severe
3. 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
4. those characteristics were known to the occupier, or to someone who looks after the animals

However, the occupier won't be liable under this Act if the damage or injury was suffered by a trespasser, or it was wholly the fault of the injured person, or if they voluntarily accepted the risk of it happening to them.

Landowners who are concerned about their liability in respect of animals should seek legal advice. It is also open to landowners to apply for a restriction on public safety grounds if they are concerned about cattle, for instance bulls or suckler cows in small enclosures during calving or after calving.

What about natural features?

If someone using the CROW right of access sustains injury because of a natural feature of the landscape, including any river, stream, ditch or pond, whether or not a natural feature, then the reduced level of liability under the CROW Act means that they will have no scope at all to sue the landowner.

What about injuries from stiles and gates?

If someone sustains injury by climbing over a wall or fence then the reduced level of liability under the CROW Act means that they will have no scope at all to sue the landowner. Liability only exists in relation to gates and stiles if they are used properly and an injury is still sustained.

What can landowners do to limit their liability?

Those using the new rights are expected to take the primary responsibility for their own safety. Simple access management techniques can be used to draw attention to risks or to channel people away from them. CROW local restrictions can be used to deal with any real dangers to the public from dangerous operations, machinery, livestock etc