



ACCESS

21 JULY 2016

REFERENCE

GN11-16

COASTAL ACCESS: SUMMARY OF RELEVANT DUTIES AND LIABILITIES



INTRODUCTION

The guidance contained in this publication has been developed by the CLA with input from Natural England and Defra. This guidance has no official Government status and anyone seeking legal advice on a particular case is advised to consult a lawyer. Only the Courts can authoritatively interpret the law in these matters.

Defra link to CLA website: <https://www.gov.uk/guidance/open-access-land-management-rights-and-responsibilities>

The issue of occupiers' liability was considered in detail as part of the process of granting new access rights for open-air recreation which were set out in the Countryside and Rights of Way Act 2000 "CROW Act". At the time the new access rights were being considered landowners and occupiers were justifiably concerned that an increase in access should not lead to a consequent rise in the level of liability owed to those accessing their land and the Government agreed, as a result significant amendments to Occupiers' Liability Act 1984 "OLA 1984" were included within the CROW Act to protect occupiers.

Such issues were considered again when formulating the Marine and Coastal Access Act 2009 "MCA Act". The principle of protecting occupiers from an increase in liability was considered to be particularly applicable in coastal areas, for example because of the potential dangers to the public caused by cliffs, coastal defence structures, erosion and old quarrying mine workings which are often extensive. As a result additional amendments, on top of those included in the CROW Act were added to limit any potential liability on land within the coastal margin.

SCOPE OF THIS GUIDANCE

This guidance focuses on the Occupiers' Liability Act 1957 "OLA 1957" and the OLA 1984. Whilst other forms of liability are not considered it should be noted that section 12(1) CROW Act makes it clear that the access provisions should not increase the liability on occupiers:

The operation of section 2(1) in relation to any access land does not increase the liability, under any enactment not contained in this Act or under any rule of law, of a person interested in the access land or any adjoining land in respect of the state of the land or of things done or omitted to be done on the land.

WHAT IS MEANT BY OCCUPIERS' LIABILITY?

Occupiers may owe a "duty of care" to those that access their land as a result of the state of the premises or things done or omitted to be done on them. Who will be considered as the "occupier" for the purposes of these Acts is a question of fact and will depend on who exercises control over the premises.

The level of duty owed by the occupier to those that access their land varies depending on the circumstances, for instance whether or not the entrant has the permission of the occupier, whether entering pursuant to a private right or exercising statutory rights.

To get a better understanding of the reduced level of liability owed by occupiers on land subject to coastal access rights, set out below is a brief summary of the existing liability under OLA 1957 and OLA 1984.

Occupiers' Liability Act 1957

The duty of care owed to visitors is contained in the OLA 1957, the common duty of care is set out at section 2(2): "*The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.*"

The duty owed is based on reasonableness and as a result the occupier will not always be expected to undertake costly preventative measures. Where the entrant is considered to be there with the permission of the occupier what is reasonable will be judged on a case by case basis. In general if there is a danger then the occupier should either take steps to guard them or give the visitor sufficient warning of the danger.

Occupiers' Liability Act 1984

The OLA 1984 sets out the duty of care owed to people other than visitors, for instance trespassers. The duty is to "*take such care as is reasonable in all the circumstances of the case to see that he does not suffer injury on the premises by reason of the danger concerned.*"

The duty is only engaged where all of the following three conditions set out at section 1(3) are met:

An occupier of premises owes a duty to another (not being his visitor) in respect of any such risk as is referred to in subsection (1) above if—

- (a) *he is aware of the danger or has reasonable grounds to believe that it exists;*
- (b) *he knows or has reasonable grounds to believe that the other is in the vicinity of the danger concerned or that he may come into the vicinity of the danger (in either case, whether the other has lawful authority for being in that vicinity or not); and*
- (c) *the risk is one against which, in all the circumstances of the case, he may reasonably be expected to offer the other some protection.*

OCCUPIERS' LIABILITY ON COASTAL MARGIN

The Coastal Margin is the area within which coastal access rights apply once they are brought into effect (by an order made by the Secretary of State) on a particular area of coast. It includes the England Coast Path itself, and typically also land such as beaches or cliff slope that lie seaward of the path. Parts of the margin may not be subject to coastal access rights, for example where they fall within one of the 'excepted land' types listed in Schedule 1 to the CROW Act (such as houses and gardens), or at any times when the access rights are excluded by a direction given by Natural England.

1. Are people exercising coastal access rights seen as visitors?

No. To ensure that occupiers were not adversely affected by access rights, the previous level of the duty was amended by the CROW Act in 2000 and amended further in relation to coastal access by the MCA Act in 2009. Section 1(4) OLA 1957 says:

- (4) *A person entering any premises in exercise of rights conferred by virtue of—*
 - (a) *section 2(1) of the Countryside and Rights of Way Act 2000, or*
 - (b) *.....an access agreement or order under the National Parks and Access to the Countryside Act 1949,*

is not, for the purposes of this Act, a visitor of the occupier of the premises.

Land with coastal access rights falls within category (a) above.

2. What duty do occupiers owe on Coastal Margin?

The OLA 1984 was further amended so that where coastal access rights are in force within the coastal margin, occupiers owe no liability to those exercising the rights of access as a result of "*....a risk resulting from the existence of any physical feature (whether of the landscape or otherwise)*".

This amended duty is set out at section 1(6A):

At any time when the right conferred by section 2(1) of the Countryside and Rights of Way Act 2000 is exercisable in relation to land which is access land for the purposes of Part I of

that Act, an occupier of the land owes (subject to subsection (6C) below) no duty by virtue of this section to any person in respect of—

- (a) *a risk resulting from the existence of any natural feature of the landscape, or any river, stream, ditch or pond whether or not a natural feature, or*
- (b) *a risk of that person suffering injury when passing over, under or through any wall, fence or gate, except by proper use of the gate or of a stile.*

Section 6A is further amended by (6AA):

(6AA) where the land is coastal margin for the purposes of Part 1 of that Act (including any land treated as coastal margin by virtue of section 16 of that Act), sub-section (6A) has effect as if for paragraphs (a) and (b) of that sub-section there were substituted “a risk resulting from the existence of any physical feature (whether of the landscape or otherwise).

So whether a physical feature is man-made or natural, there is normally no liability for a risk resulting from its existence while coastal access rights are in force on the land in question.

Things done intentionally or recklessly

Section 1(6C) OLA 1984 adds that the reduced level of liability described above does not apply where the danger concerned is due to anything done by the occupier (a) with the intention of creating the risk, or (b) being reckless as to whether the risk is created. This caveat relates only to things done by the occupier, not to any omissions on the occupier's part.

Agreements and Orders relating to means of access to land

There is no general obligation on occupiers to facilitate access to land with access rights by opening up new 'means of access' such as crossing points in field boundaries, steps, bridges etc. The CROW Act therefore allows for ways in which such means of access can be granted and maintained by agreement with the local access authority or, in the absence of agreement, by order. These agreements or orders can contain provisions for improvement and repair of an existing means of access or the construction of a new means of access. They may also contain restrictions on the occupier destroying, removing, altering or stopping up any means of access to the land or doing anything which would impede access.

The provisions of an access order must not require work to be carried out at the expense of anyone having an interest in the land.

Further Consideration

If, despite the amendments to OLA 1984 detailed above, the occupier is still found to have some form of duty the courts must have regards to section a), b) and c) below when determining both the existence and extent of the duty. The reduction in the level of occupiers' liability owed to those accessing the land pursuant of coastal access rights is further emphasised by section 1A of the OLA 1984:

Section 1(A)

In determining whether any, and if so what, duty is owed by virtue of section 1 by an occupier of land at any time when the right conferred by section 2(1) of the Countryside and Rights of Way Act 2000 is exercisable in relation to the land, regard is to be had, in particular, to –

- (a) the fact that the existence of that right ought not to place an undue burden (whether financial or otherwise) on the occupier,*
- (b) the importance of maintaining the character of the countryside including features of historic, traditional or archaeological interest, and*
- (c) any relevant guidance given under section 20 of that Act.*

What does this mean for occupiers?

In summary the liability of occupiers of coastal margin is reduced significantly by the provisions set out above. Their effect is to exclude occupiers' liability arising from all physical features whether of the landscape or otherwise which includes man-made features.

It is hoped that the amendments to the occupiers' duty of care described above should provide reassurance to occupiers who have in the past maintained access routes along the coast or wider access to beaches etc. If these access opportunities and associated structures are now subject to coastal access rights, the limitations on liability described above should mean that:

- a. Occupiers do not feel compelled to remove means of access such as steps for fear of being held liable for any injury that might take place on them.
- b. Occupiers are not under an obligation to maintain such structures if they no longer require them.
- c. Whilst under no obligation to do so, if occupiers choose to provide or maintain any structures within the coastal margin they will not suffer any increase in liability as a result; unless, as mentioned above, by such actions they intended to cause injury or are reckless as to whether injury is caused.

The effect of an invitation

Where an occupier invites persons to enter access land, as opposed to using their statutory rights of access over the land, those people may be considered as visitors by the court as they would not be entering and using the premises in exercise of their access rights. As an example where an occupier invites people onto access land in a car or to camp, this goes beyond the statutory right of access and accordingly the special liability reduction would not apply to these uses of the land.

Signage Specifying Occupiers' Permission

Whilst we are not aware of any reported cases on the matter legal commentators have suggested that where an occupier invites people onto premises adjacent to or subject to statutory access as visitors it would be prudent to put up notices clearly explaining the extent of the invitation and that those entering coastal margin adjacent to this land (where it is within the same ownership), are doing so solely pursuant to their statutory right of access.

Section 19 CROW Act sets out that an access authority may “defray or contribute towards” signs. In such instances occupiers may wish to contact the relevant access authority to discuss.

Courts Interpretation

This guidance provides a summary of these provisions but it is ultimately for the Courts to interpret the duties owed by the occupiers of access land, and historically they have taken a robust approach. In *Tomlinson v Congleton Borough Council [2003]* Lord Hobhouse stated:

“Does the law require that all trees be cut down because some youths may climb them and fall? Does the law require the coastline and other beauty spots to be lined with warning notices? Does the law require the attractive water side and picnic spots to be destroyed because of a few foolhardy individuals who chose to ignore the warning notices and indulge in activities dangerous only to themselves?

The answer to all these questions is, of course, no”.

The amendments to OLA 1957 and OLA 1984 reflect the fact that the coastal areas contain a range of potentially dangerous natural and manmade features. Members of the public exercising rights of access are primarily responsible for assessing the risk for themselves and taking responsibility for their own safety and the safety of anyone in their care, as the Countryside Code urges them to do.

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