

Recreation in the Irish Countryside

Property Rights, Obligations and Responsibilities

Information for landowners and recreational users



This information leaflet has been produced by the Department of Environment, Community & Local Government and is endorsed by the member organisations of Comhairle na Tuaithe (the Countryside Council)*



Comhshaoil, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

Introduction



Every week thousands of people engage in walking and other recreation activities in the Irish countryside. These activities deliver significant health and well-being benefits for participants, while also bringing valuable income to rural areas and helping to support the national economy. People are drawn to wild and beautiful landscapes as a counterbalance to everyday life, for contact with nature, and for a physical challenge.

As much of this activity takes place on privately owned land,

the law on occupiers' liability was updated in 1995 to protect landowners/occupiers from claims by entrants onto their land. Despite this, many landowners/occupiers and recreational users are unsure about their obligations and responsibilities. This leaflet provides information on the Occupiers' Liability Act, 1995, and on access to land for recreational use and related matters. It is aimed at landowners/occupiers, and also everyone who uses the Irish countryside for recreation.



Background

Comhairle na Tuaithe (the Countryside Council) was established in February 2004 to address three priority areas: access to the countryside; agreement of a countryside code; and the development of a national countryside recreation strategy. It works closely with the Rural Recreation section of the Department of Environment, Community & Local Government, who have primary responsibility for the implementation of the National Countryside Recreation Strategy (NCRS).

Comhairle na Tuaithe comprises representatives of farming organisations, state land managers, recreational groups and state bodies with an interest in recreation in the Irish countryside. The members of Comhairle and the Department of Environment, Community & Local Government have produced this leaflet to improve public understanding of access and liability issues in the context of countryside recreation activities.

The scope of this leaflet is **“countryside recreation”** as defined by Comhairle na Tuaithe. Countryside recreation applies

to those sporting, recreational and holiday activities based on use of the resources of the countryside, and which contribute to healthy active lifestyles. The term countryside includes land, water and air. The term recreation in this context applies to sporting and recreational activities which operate in the countryside as defined above. It does not refer to sporting activities which take place in the countryside on confined courses or pitches specifically designed and constructed for those sports, e.g. golf, football, show jumping, etc., (National Countryside Recreation Strategy, 2006). All countryside recreation as defined above falls within the definition of recreational activity in the Occupiers’ Liability Act, 1995.

“Landowners/Occupiers” in the context of this document should be taken to include owners (including state landowners and land managers), occupiers and farmers. An occupier, means a person exercising such control over the condition of the land, or other premises, that it is reasonable to impose upon that person a duty of care towards an entrant.

Key definitions from Occupiers' Liability Act, 1995

“Recreational Activity” means any recreational activity conducted, whether alone or with others, in the open air (including any sporting activity), scientific research and nature study so conducted, exploring caves and visiting sites and buildings of historical, architectural, traditional, artistic, archaeological or scientific importance.

“Recreational User” means an entrant who, with or without the occupier's permission or at the occupier's implied invitation, is present on premises without a charge (other than a reasonable charge in respect of the cost of providing vehicle parking facilities) being imposed for the purpose of engaging in a recreational activity.

Property Rights and Access



All land in Ireland is in private or state ownership. Many upland areas are owned as commonage, i.e. land that is jointly owned by a number of people with specific shares in it. **Participants in recreation activities should be aware that there is no legal right of access to the Irish countryside.** Those who enter onto land owned by others, for the

purpose of recreation, do so due to the goodwill and tolerance of landowners. Ireland's waymarked trails are “permissive routes” that have been developed with the landowners' agreement; they are not rights of way. Some government and semi-state organisations encourage access to their lands for public enjoyment (e.g. Coillte), but even in these areas access is permissive and the public does not have a right of access.

The inclusion of a route description in a printed or online publication, or a track on a map, does not of itself mean there is a right of entry, or that the landowner has granted permission. Where an opportunity arises, recreational users are encouraged to speak with

landowners, and to ask if access is permitted on their intended route. In the vast majority of cases access will be allowed. This type of engagement makes a positive contribution to the relationship between recreational users and the landowning community.

In situations where more formal access is required, e.g. for commercially guided groups, or recreation events that involve

large numbers of participants, permission should be sought. Participants in countryside recreation activities are also expected to respect the interests of other people, and to care for the natural environment. These responsibilities underpin the National Countryside Recreation Strategy, and are elaborated and promoted through the Leave No Trace programme.

Rights of Way

In Ireland, there are two types of right of way, public and private, with very different meanings. A private right of way is the right to enter onto private lands, but only for the purposes of gaining access to or exiting from another piece of land. Private rights of way, while more common, are about the management of private land, typically being arrangements between neighbours and therefore not relevant to the public. A public right of way is a strip of land (normally a road or path), usually leading from a public place to a public place, along which the public has a legal right to travel. There are very few registered public rights of way in Ireland that are not maintained public roads. A considerable amount of high quality evidence is required

to prove a route as a public right of way.

Under the Planning and Development Acts 2000 to 2010, a local authority has the power to make an order to create a public right of way, subject to compensation of the landowner(s) concerned. The Acts require local authorities to preserve existing public rights of way by mapping and listing them as part of the County Development Plan. The process includes notice to landowners and occupiers and a right of appeal.



Responsibility of Recreational Users for their own safety and that of others

A degree of risk is inherent to all countryside recreation activities, arising from a combination of the activity itself, changeable weather conditions and the natural features of countryside, mountain and coastal terrain. Countryside recreation activities are based on an ethos of recreational users being aware

of and accepting these risks, and taking responsibility for their own actions. This principle is recognised in the Occupiers' Liability Act, 1995 and Irish case law. Therefore, it is important to have the right clothing and equipment, and the appropriate knowledge, skill and experience before setting out.

Occupier's Liability

The Occupiers' Liability Act, 1995 was introduced to address the question of the exposure of landowners to claims arising from injuries to recreational users and others, including trespassers. In particular, it was to ensure that recreational use of land does not place an undue burden of responsibility on landowners.

The Act defines categories of entrants onto land and specifies the duty of care owed by occupiers (an occupier is anyone in charge of a premises such as the owner, tenant, etc). Under the Act, there are three categories of entrant: visitors; recreational users and trespassers. The duty of care owed by an occupier to a

recreational user or a trespasser is minimal, i.e. not to deliberately injure the person or damage their property. A higher duty of care is owed to visitors.

Where an occupier gives a recreational user permission to enter land this does not make the recreational user a visitor, therefore it does not increase the duty of care owed. This is clear in the Act, where a recreational user is defined as a person entering "with or without permission". A landowner charging recreational users for entry (as opposed to a reasonable charge for parking) increases his/her duty of care to the level of that owed to visitors.

For the purpose of the Occupiers' Liability Act, 1995, the three categories of entrant, and the duties owed by an occupier to each, are explained below:

Entrant	A Person who is Present on Premises** whose Purpose is	Duty of the Occupier
Recreational user	<ul style="list-style-type: none"> • engaging in recreational activity, • with or without the occupier's permission or at the occupier's implied invitation, • and who has not paid any fee other than a reasonable charge for parking. 	<p>Not to <i>intentionally injure</i> the person or damage the property of the person, nor act with <i>reckless disregard</i> for the person or the property of the person.</p>
Trespasser	<ul style="list-style-type: none"> • not recreational, and who does not have permission; or • recreational, but who has defied a prohibition on entry, or • recreational, but who has been asked to leave and is not doing so. 	
Visitor	<ul style="list-style-type: none"> • that for which they were invited, e.g. guest; • that of performing a contract, e.g. builder; • that of exercising a right (e.g. Garda, postman, etc.); or an entrant • who has paid a fee, other than a reasonable charge for parking facilities. 	<p>To take such care as is reasonable in all the circumstances to ensure that a visitor to the premises** does not suffer injury or damage by reason of any danger existing on the premises.</p>

** Premises in the context of the Act, includes land and water, and any fixed or moveable structures thereon, and also includes vessels, vehicles, trains, aircraft and other means of transport.

Although we are unaware of any successful claims by recreational users against occupiers, it is important to stress that occupiers have a duty not to act with “reckless disregard” as per Section 4(1) (b) of the Act. What exactly may constitute reckless disregard is difficult to catalogue precisely. Reckless is beyond careless and almost intentional. It is characterised as wilful, being heedless of obvious and serious dangers.

As per Section 4(2) of the Occupiers’ Liability Act 1995 in determining whether or not an occupier has so acted with reckless disregard, regard shall be had to all the circumstances of the case.

It should be noted that Section 4(3) of the Act provides that the occupier shall not be liable for a breach of the duty of care to a person who enters onto their land for the purpose of committing an offence, or who commits an offence while on the premises, unless a court determines otherwise in the interests of justice.

It is also worth noting that the duty of care can be increased, for example where structures have been provided for use by recreational users, the occupier has a duty to maintain the structure in a safe condition (Section 4(4)).

Relevant Case Law

The Occupiers’ Liability Act, 1995 remained untested for years. In 2003 a High Court judge, in the case of *Weir Rodgers v The S.F. Trust Ltd.*, found the landowner to be 75% responsible for injuries sustained by a woman who fell down a cliff late in the evening after watching a sunset with friends.

This case was appealed and the original judgment was overturned in the Supreme Court in January 2005. The written judgment delivered made clear that a landowner can assume that those

on private land for recreational purposes will understand the risk that is inherent in their activities, have regard to the nature of the terrain they are crossing, and take measures to ensure their own safety. Justice Geoghegan’s comments included the following:

“It is perfectly obvious to all users of land higher than sea level but adjoining the sea that there may well be a dangerous cliff edge, and in those circumstances the occupier of the lands cannot be held to be unreasonable in not putting up a warning notice. Still

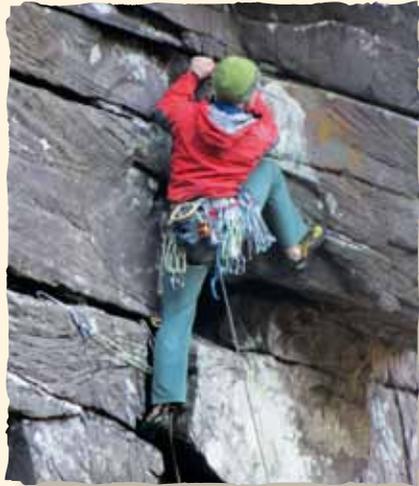
less has he a reckless disregard for the safety of the person using the land."

This judgment strengthened the 1995 Act considerably, and it was welcomed by recreational groups and by the three main farming organisations:

"This judgment (Weir Rodgers v The S.F. Trust Ltd.) will make it difficult for persons who are recreational users of land to successfully take a case against the landowner unless they can show that the landowner acted in reckless disregard of any danger on his land. In addition the recreational user must have regard for the nature of the land over which they are crossing. If it is rough and wet then that person is deemed to be aware of the type of risk inherent in such terrain."
(James Staines, IFA Solicitor, Irish Farmers Journal 29/1/2005).

The Supreme Court judgment in the Weir Rodgers case referred to the House of Lords case of Tomlinson v Congleton Borough Council (2003), an English judgement which involved a young man who dived into a lake and broke his neck. In that case, in what is considered to be a landmark judgment, Lord Hoffman stated:

"I think it will be extremely rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities they freely choose



to undertake upon the land. If people want to climb mountains, go hang-gliding, or swim or dive in ponds or lakes - that is their affair."

The National Trails Office/Irish Sports Council in conjunction with Local Authorities arranges insurance for waymarked walking routes and other recreational trails in Ireland. The policy indemnifies private landowners along these routes against claims from recreational users. To date no claim has been made against this policy, which has been in place for over 12 years. Any claims that do arise tend to be against state bodies, who arrange their own insurance. Since the Occupiers' Liability Act, 1995 was introduced only two personal injuries cases have been taken against Wicklow Mountains National Park, which is visited by over 1 million people per year. One case is pending, the other was successfully defended in 2006 under the Occupiers'

Liability Act, 1995, with the judge concluding that the claimant was a recreational user, not a visitor, that the duty of care owed was minimal and that it had not been breached.

A study carried out in 2011 for Sport Northern Ireland, on occupiers' liability case law, and cases settled out of court in Britain and Ireland over the

previous decade, showed that not one single case has emerged of a successful claim related to the informal recreational use of the natural environment. The study did identify a tendency in the lower courts to award 'sympathy payments' to minors injured on structures, or in areas such as parks, where a higher degree of management might be expected than in the natural environment.

Public liability

It is advisable that all landowners have public liability insurance, whether or not there is recreational activity on their land. This covers injury, disease or property damage caused to a member of the public arising from landowning/farming activities.

Recreational users are also advised to have public liability insurance to cover their liability for injury or damage caused to the landowner/occupier, or to another third party, as a result of their own negligence. The representative bodies for most countryside recreation activities arrange insurance cover for registered members.



Responsible enjoyment of the countryside

As increasing numbers of people seek the beauty and excitement of recreation in the Irish countryside, our collective mark on the natural environment increases. The impacts may affect water quality and biodiversity, and include litter, disturbance of wildlife and farm animals, trampling of vegetation, damage to fences and loss of privacy for local residents.

The Leave No Trace programme helps people understand the outcome of their actions in the countryside and gives guidance as to how to reduce any negative impacts.

For example, by making people aware that sheep graze on the hills, explaining how dogs react to sheep, the stress this causes sheep and how it affects a

farmer's livelihood, people should appreciate that it is better not to take dogs onto farmland. This should reduce impacts on the sheep and conflicts with farmers, and help build good relationships between recreational users and landowners in the countryside.

Find out how you can reduce the impact of your recreational activity by visiting:

www.leavenotraceireland.org.

Comhairle na Tuaithe supports and endorses the Leave No Trace programme.



**Can we leave for tomorrow
what we enjoyed today?**

This leaflet is intended as a layperson's guide to a complex and much misunderstood area. In any such effort there is always a difficulty trying to be both brief and accurate on the one hand, and the need for comprehensive certainty on the other. Tension will also exist between the use of plain language that is readily understood, and the use of terms that have specific meaning to lawyers. Lastly, beware of lifting isolated statements from the text and applying them out of context.

The full text of the Occupiers' Liability Act, 1995 and the judgment in the Weir-Rodgers case can be downloaded from the Comhairle na Tuaithe webpage <http://www.environ.ie/en/Community/RuralDevelopment/NationalRuralDevelopment/ComhairlenaTuaithe/>. For a legal interpretation you should contact a solicitor.



*This publication is endorsed by the following members of Comhairle na Tuaithe:

Angling Council of Ireland • British Horse Society Ireland • Coillte • County & City Managers Association
Fáilte Ireland • Forest Service – Department of Agriculture, Food and the Marine • Irish Cattle and Sheep Farmers Association
Irish Creamery Milk Suppliers Association • Irish Farmers Association • Irish Local Development Network
Irish Sports Council • Irish Uplands Forum • Keep Ireland Open • Mountaineering Ireland • National Parks and Wildlife Service
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