

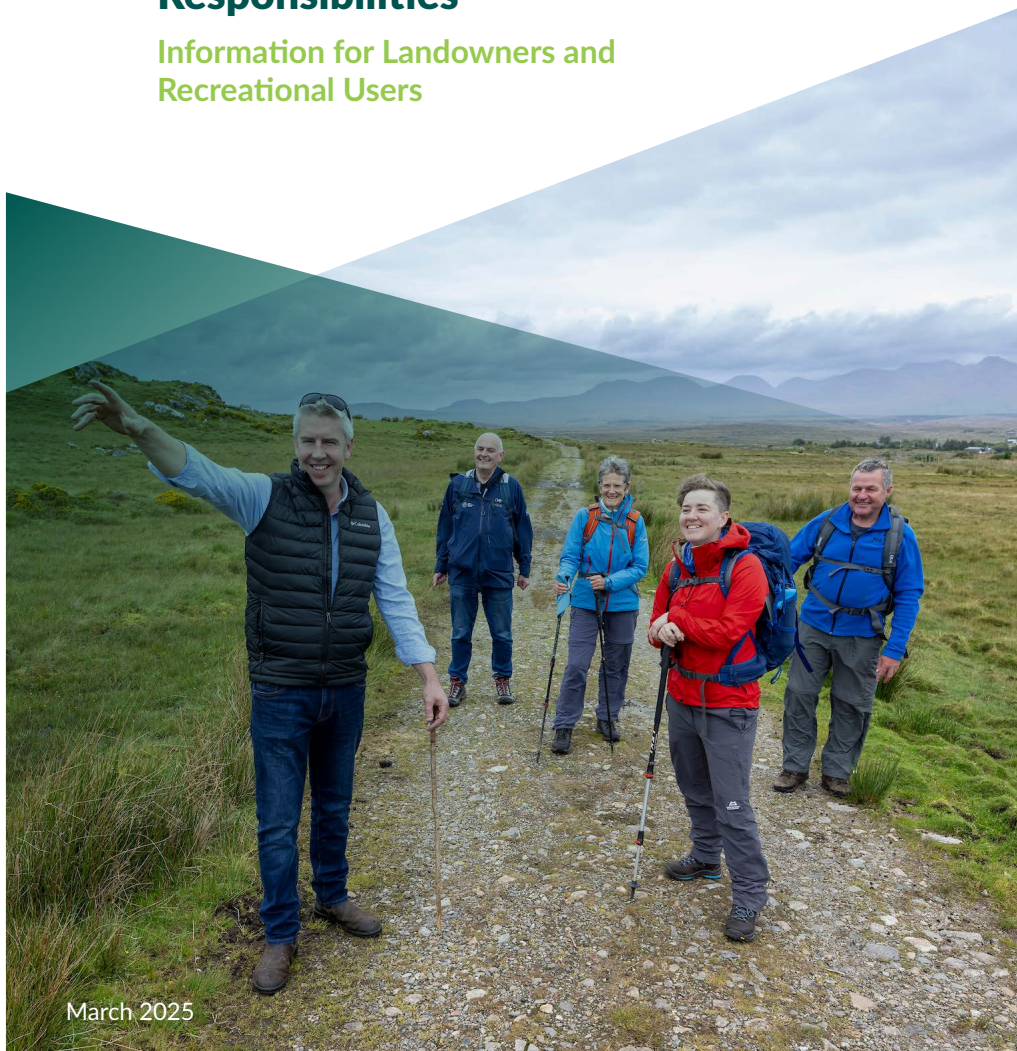


An Roinn Forbartha
Tuaithe agus Pobail
Department of Rural and
Community Development

Recreation in Ireland's Outdoors

Property Rights, Access and People's Responsibilities

Information for Landowners and
Recreational Users



March 2025



Introduction

Every week tens of thousands of people engage in walking and other recreational activities in Ireland's outdoors. These activities deliver significant health and well-being benefits for participants, provide valuable income to rural areas and help support the wider 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.

Concern amongst landowners that they might be liable if people engaged in recreation activity were injured on their land was one of the factors that prompted the introduction of the Occupiers' Liability Act in 1995.

The Occupiers' Liability Act applies to all property, both land and buildings. The Act is mainly concerned with the state of the premises, and the landowner's responsibility, or duty of care, that stems from that.

The Occupiers' Liability Act contains important provisions that significantly limit the legal obligations owed to people enjoying the outdoors.

Amendments to the Occupiers' Liability Act which came into effect at the end of July 2023 further limit the duty of care that landowners and occupiers owe to people who enter onto property. The amended Act also embeds in legislation a long-established principle that participants in outdoor recreational activities take responsibility for their own actions and their own safety.

This leaflet focuses on the provisions in the Occupiers' Liability Act that relate to recreation in the outdoors, as well as general commentary on property rights, access to land and people's responsibilities. It is aimed at landowners/occupiers, and everyone who uses Ireland's outdoors for recreation, education or related activities.



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.

In 2018 Comhairle na Tuaithe was given a fresh mandate, and in November 2022, *Embracing Ireland's Outdoors*, Ireland's new National Outdoor Recreation Strategy was approved by Government.

Comhairle na Tuaithe works closely with the Department of Rural & Community Development and with Sport Ireland, who share responsibility for the implementation of the National Outdoor Recreation Strategy.

Comhairle na Tuaithe comprises representatives of farming organisations, State land managers, recreational groups and State bodies with an interest in recreation in Ireland's outdoors. The members of Comhairle and the Department of Rural & Community Development have produced this leaflet to improve public understanding of the Occupiers' Liability Act in the context of outdoor recreational activities.

The scope of this leaflet is '**outdoor recreation**' as defined by Comhairle na Tuaithe. By outdoor recreation we mean activities that take place in the natural environment, such as walking, canoeing, mountain biking, orienteering and wild swimming. It does not include activities that take place outdoors on confined courses or pitches (such as golf, football, show jumping) or motorised activities (such as quads/scramblers) with the exception of motorised mobility aids (*Embracing Ireland's Outdoors 2023-2027*). All outdoor recreation as defined above falls within the definition of recreational activity in the Occupiers' Liability Act, 1995.



Property Rights and Access

All land in Ireland is in private or State ownership, with less than 20% of land owned by the State. Many upland areas are owned as commonage, i.e. land that is jointly owned by a number of people with specific shares in it. The term 'commonage' is also used to describe individually-owned land where a number of people share limited rights such as grazing, turf cutting or other rights to the land.

Participants in recreational 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. Where a landowner or occupier asks you to leave the land, you should do so.

A landowner on either side of a river, referred to as a 'riparian owner', can restrict access to, or along, a section of the river. Lake access is similar, but can be more complex as there may be multiple riparian owners. Where fishery is valuable, access to rivers and lakes is likely to be controlled by the owner of the fishing rights.

Along the coast, the State owns everything below ordinary high-water tideline, however some popular access routes to the water, and many along the coast, are across privately-owned land, with access again dependent on the goodwill of the landowner. If you are coming from the sea, you can land virtually everywhere below ordinary high-water, but you can't assume that you have the right to go inland.

Ireland's waymarked trails are "permissive routes" that have been developed with the landowners' agreement. They are not public rights of way and the landowner is entitled to withdraw their consent to access.

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 online or in a printed 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 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.

All those engaged in outdoor recreational activities should recognise that maintaining access is a shared responsibility.

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.

More information is available in Comhairle na Tuaithe's Guidelines for Organising Outdoor Activity Events - www.failteireland.ie

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 much 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. The Supreme Court judgment in the Lissadell case (November 2013) shows that a considerable amount of high-quality evidence is required to prove a route as a public right of way.

Under the Planning and Development Act 2000 (as amended), 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 Act empowers 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.

Recreational Users Have a Responsibility for Their Own Safety – It's The Law

A degree of risk is inherent to all outdoor recreation activities, arising from a combination of the activity itself, changeable weather conditions and the natural features of countryside, mountain and coastal terrain. Outdoor recreation activities are based on an ethos of recreational users being aware of and accepting these risks and taking responsibility for their own actions. Therefore, it is important to have the right clothing and equipment, and the appropriate knowledge, skill and experience before setting out.

With the incorporation of voluntary assumption of risk in the 2023 revisions to the Occupiers' Liability Act, this ethos of personal responsibility has become part of Ireland's legislation.

Recreational users should recognise their personal responsibility to be aware of risks associated with accessing land, including various farming operations and livestock (particularly recently calved cows, bulls) etc.



Occupiers' 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, arising from the state of the premises. In particular, it sought to ensure that recreational use of land does not place an undue burden of responsibility on landowners. Changes to the Act in 2023 further balance the duty of care in favour of landowners and occupiers. An 'occupier' is a person with effective legal control of the land, usually a landowner or tenant.

Under the Occupiers' Liability Act, **there are three categories of entrant** onto property: recreational users; trespassers and visitors. 'Recreational user' refers to people engaged in recreational activity in the open air on someone else's land for free (other than a reasonable charge for parking). The occupier owes a higher duty of care to visitors (who may be family members, invited guests, or others on premises with the occupier's permission, but not there for the purpose of recreation).

The Act is clear that where a recreational user is given permission to enter land this does not increase the duty of care to that owed to a visitor. However, a landowner charging recreational users for entry (other than a parking charge) does increase their duty of care to the higher level that is owed to visitors.

The occupier of land owes a very limited duty of care to a recreational user. It is a duty that concerns the state of the premises. In terms of the outdoors, the occupier is not required to make land safer than it is in its natural state, be it farmland, forest or the open countryside.

The duty has three aspects:

1. A duty not to injure the recreational user intentionally
2. A duty not to act with 'reckless disregard'
3. Where a structure is provided for use primarily by recreational users, the occupier has a duty to take reasonable care to maintain the structure in a safe condition.

In the case of 'reckless disregard' and 'structures for use primarily by recreational users' the duty is limited and qualified by many factors.

Reckless disregard

In considering whether an occupier has acted with 'reckless disregard' a court will have to consider a range of matters and then come to a conclusion as to whether the behaviour of the occupier is so objectionable that it can be fairly said that the occupier is responsible for knowingly exposing people to an unjustifiable danger.

The law expects that a recreational user will:

- ➔ take reasonable care for their own safety;
- ➔ conduct themselves responsibly;
- ➔ take the countryside as they find it and be alive to its dangers – e.g. mountains, moorlands, bogs and forests have difficult terrain, headlands have cliffs, lakes and rivers can present dangers;
- ➔ heed any warnings given;
- ➔ supervise people under their control;
- ➔ follow the directions of anyone supervising them;
- ➔ not enter the land for the purpose or with the intention of committing an offence.

The law looks to the occupier and takes into account:

- ➔ the character of the land and the likelihood of its use for recreational activity;
- ➔ the degree of knowledge the occupier had or should have had regarding the existence of the danger, the likelihood of the presence of recreational users and their likely vicinity to the danger;
- ➔ the difficulty, practicality and expense of eliminating the danger;
- ➔ the nature of any warnings given.

The law takes into account the responsibility of other people, for example the extent to which the injured person was under the supervision or control of another person.

The law also looks to the broader public interest, with weight to be given to maintaining the tradition of open access to the countryside.

Structures

The 2023 revisions to the Occupiers' Liability Act have limited the duty of care an occupier owes in respect of structures for use primarily by recreational users, such as stiles, gates, footbridges or similar structures, yet there remains a higher duty of care than for the countryside in general. The duty is **to take reasonable care to maintain the structure in a safe condition**, however this duty is heavily qualified and a court has to take into account:

- ➔ the probability of the existence of the danger;
- ➔ the probability the danger would cause injury to a recreational user;
- ➔ the probability of the severity of such injury;
- ➔ the practicality and cost of precautions or preventative measures;
- ➔ the social utility of the activity or conduct.

Voluntary assumption of risk

The 2023 revisions to the Occupiers' Liability Act provide for the voluntary assumption of risk by entrants, whereby an occupier does not owe obligations to a recreational user or a visitor where they have willingly accepted a risk and where they are capable of comprehending that risk. Acceptance is based on their words or conduct, without the need for proof of communication with the landowner, or any written agreement to limit or release an occupier from liability.



Relevant Case Law

Under Ireland's common-law legal system significant emphasis is placed on previous decisions in the higher courts. Two cases in particular have improved the situation for landowners in relation to outdoor recreation activity.

The Weir-Rodgers (Rossnowlagh) case

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 at Rossnowlagh in Co. Donegal.

This case was appealed and the original judgment was overturned in the Supreme Court in January 2005. The written judgment found a recreational user can be assumed to understand obvious risks which are inherent in their activities, having regard to the nature of the terrain they are crossing. 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 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 Wall (Wicklow Way) case

The second important case was Wall v National Parks & Wildlife Service, the Wicklow Way case, which related to structures for use primarily by recreational users (in this case a boardwalk made from re-purposed railway sleepers). This was the second of only two personal injuries cases taken against Wicklow Mountains National Park, which is visited by over 1 million people per year (the other case was successfully defended in 2006).

In the Wall case a woman who had injured her knee in a fall on a boardwalk section of the Wicklow Way took a case against the landowners, the National Parks & Wildlife Service, claiming that the degraded condition of the boardwalk caused her to trip. Under Section 4(4) of the Occupiers' Liability Act landowners owe a higher duty of care in respect of structures provided for use primarily by recreational users, which is a duty to take reasonable care to maintain the structure in a safe condition. In the Circuit Court, the National Parks & Wildlife Service was judged not to have taken reasonable care to maintain the boardwalk in a safe condition.

This decision was appealed and overturned by the High Court in a judgment which not only found that the injured woman was negligent in not watching where she placed her feet, it also made important interpretations with regard to the duty of care under Section 4(4):

"Because of the vigilance expected from hill walkers, walking on moderate mountain trails, and the application of the legal principle that the standard of care has to be adapted to the conditions, the social utility of the provision of the boardwalk, the isolated location of same, I do not hold that the defendant was negligent in not filling in the indentations or replacing the sleepers with new sleepers and will accordingly allow the appeal in full."

This significant judgment influenced the 2023 amendments to the Occupiers' Liability Act, including the addition of factors to consider when assessing whether reasonable care was taken to maintain a structure, and rebalancing the duty of occupiers with visitors acceptance of risk and responsibility for themselves.

25 years with no claims on marked walking trails.

Sport Ireland, in conjunction with Department of Rural and Community Development and local authorities arranges insurance for waymarked recreational trails in Ireland. Trails listed on the National Trails Register, following an inspection by Sport Ireland, are eligible for inclusion on the policy. The policy indemnifies private landowners along a trail against claims from recreational users. The policy has now been in place for well over 25 years. There have been a small number of claims initiated but to date none have been progressed. No payments have ever been made from the policy.

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 negligent behaviour. The representative bodies for most outdoor recreation activities arrange insurance cover for registered members.



Responsible Behaviour in Ireland's Outdoors

As more people seek the beauty and excitement of outdoor recreation in Ireland, our collective impact on the environment grows. While outdoor activities offer countless benefits, they also pose risks to biodiversity, water quality and the delicate ecosystems that make Ireland's landscapes so special. The negative impacts include littering, disturbing wildlife and farm animals, trampling on vegetation, damaging fences, and infringing on the privacy of local residents.

To promote responsible outdoor recreation, Leave No Trace Ireland encourages a sustainable approach to recreation, urging individuals and communities to reduce their environmental footprint. The Leave No Trace programme is focused on protecting Ireland's natural landscapes through education, research, and collaborative partnerships. It empowers everyone—from outdoor enthusiasts to businesses—to minimise the environmental impact of outdoor activities.

The *7 Principles of Leave No Trace* guide individuals on how to recreate responsibly:

1. Plan ahead and prepare
2. Be considerate of others
3. Respect farm animals and wildlife
4. Travel and camp responsibly
5. Leave what you find
6. Dispose of waste properly
7. Protect nature from fire.

By following these principles, we can all contribute to the preservation of Ireland's stunning natural environments, ensuring that future generations can also enjoy them. For more information on how to reduce your impact and practice responsible outdoor recreation, visit www.leavenotraceireland.org.





Enjoying the Outdoors with your Dog

Sharing your outdoor experiences with your dog can be wonderful, provided you're in a dog-friendly environment.

Plan ahead by checking if dogs are welcome and keep the advice below in mind so that you and your dog have a positive impact.

Dogs and farm animals

- ➔ The presence of a dog, even on a lead, can cause stress to sheep, and where a dog is off-lead, sheep may be chased and injured.
- ➔ The situation is even more serious where there are cattle on land, as dog owners have been injured and even killed by cows protecting their calves against dogs.
- ➔ While landowners are legally permitted to shoot a dog they believe is worrying, or may worry, their livestock, it would never get to that stage if people respect signage and the requests of landowners.

Dogs and wildlife

- ➔ Most wild animals and birds in the outdoors are under pressure from predators, harsh weather and limited food.
- ➔ Disturbance by dogs causes wildlife to waste valuable energy and affects their ability to feed and to rear their young.
- ➔ Even if you don't see birds and animals in the outdoors, it doesn't mean they are not there.

Be responsible with your dog by:

- ➔ Keeping your dog on a lead in the outdoors, unless you're in an area where off-lead dogs are specifically permitted.
- ➔ Bringing your dog to dog-friendly places, avoiding places where farm animals may be present, including upland areas.
- ➔ Picking up your dog's waste, transporting it home with you if necessary and disposing of it properly.
- ➔ Keeping all animals safe, including your dog, by keeping your dog on a lead in the wild or near farms.

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 Revised can be downloaded from www.lawreform.ie

For a legal interpretation you should contact a solicitor.

This publication is endorsed by the Department of Rural & Community Development and the members of Comhairle na Tuaithe:



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