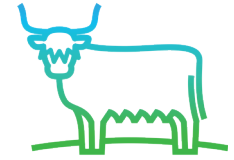


# LIABILITY FOR DAMAGE CAUSED BY ANIMALS



## CORE TOPICS:

- Liability for damage caused by animals under common law and statute.
- Defences available to rewilders responsible for animals.

## KEY TAKEAWAYS:

- If you own or are responsible for an animal, you should take steps to ensure it does not cause injury or damage to third parties (including employees) or their property.
- There are important practical steps that should be taken to avoid accidents in the first place and minimise the risk of liability when they do occur.
- Damage or injury caused by animals may result in civil or criminal liability.
- Liability will always be fact dependent and may arise under common law and different legislation.

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## 1. INTRODUCTION AND PRACTICAL STEPS TO AVOID LIABILITY

Animals play a vital role in many rewilding projects. As part of planning and managing a rewilding project which involves animals, it's important to appreciate the legal risks associated with them in circumstances where they injure third parties or cause damage to another person's property. By understanding these risks, practical measures can be put in place to minimise the risk of them occurring.

### Practical steps to limit potential liability for damage or injury caused by animals

To reduce the risk of liability for animals occurring, a rewilder should:

- undertake regular and thorough risk assessments in relation to the risks posed to visitors by animals, taking into account areas of the project to which members of the public have access. The HSE has published [importance guidance](#) on the interaction between animals and public access which should be followed. Key examples from this guidance which relate to animals and public access are highlighted in the Rewilding in England & Wales: Public Access note. Acting in accordance with these risk assessments will help rewilders to demonstrate that they have acted in accordance with the duty owed to members of the public under the HSAW Act and also the Occupiers Liability Acts;
- ensure that they have the right insurance in place which covers any civil liability for damage or harm caused by animals;
- make explicitly clear, via signs or other notifications, whether the rewilding project is publicly accessible or not and that if it is accessible anyone accessing the site does so at their own risk, with regard to injury by any animals on the site. This is to reduce the risk of animals causing damage or injury to

members of the general public, and to strengthen the argument that individuals were trespassing when they were injured by an animal and/or accepted the risk of injury when entering the land;

- erect/maintain fencing and/or other suitable barriers to ensure livestock, horses and other animals cannot escape and cause damage to neighbouring land or property or injury to third parties; and
- seek targeted legal advice when an animal causes damage or injury, including with respect to which defences may be available. This may also include seeking evidence from experts (biologists, veterinarians and other specialists) that can ascertain whether an animal belongs to a "dangerous species" or not.

## 2. LIABILITY UNDER THE OCCUPIERS LIABILITY ACTS 1957 AND 1984

Liability under the Occupiers Liability Acts 1957 and 1984 is civil liability which means that if found liable, a rewilder or other land manager responsible for animals on their land could be ordered to pay monetary damages to compensate for the damage or injury caused by the animal.

In reality, this type of potential liability should be covered by third party liability insurance.

A detailed analysis of when each of these Acts will apply and the duty of care owed to visitors is covered in the *Rewilding in England & Wales: Liability to Individuals on Land* note published in this series of briefings and applies to damage or injury caused by animals.

## 3. LIABILITY UNDER THE HEALTH AND SAFETY AT WORK ACT 1974

Under the Health and Safety at Work Act 1974 ("HSAW Act"), anyone undertaking rewilding as some form of business or operation which otherwise generates income (including on a self-employed basis), owes a duty of care to ensure that any person who may be affected by the rewilding activities is not exposed to risks to their health or safety.

Liability under the HSAW Act is criminal liability and is typically enforced by the Health and Safety Executive (the "HSE"). If an offence is established, the person found to be in breach could be ordered to pay a fine and/or face up to two years imprisonment.

Landholders including rewilders should be aware that the HSE regularly investigates incidents involving cattle and members of the public in England and Wales, with the two most common factors in these incidents being cows with calves and walkers with dogs. The HSE has also previously prosecuted farmers where a member of the public has been killed by livestock.<sup>1</sup>

Landholders including rewilders must undertake adequate risk assessments to ensure that their duty under the HSAW Act is complied with and follow this [HSE guidance](#).

For further details on liability under the HSAW Act, please see the *Rewilding in England & Wales: Liability to Individuals on Land* and *Rewilding in England & Wales: Public Access* notes published in this series of briefings.

## 4. LIABILITY IN COMMON LAW NUISANCE

Nuisance can impose on landholders an obligation to take action to stop or prevent things from occurring on their land which adversely impact their neighbour's enjoyment of their own land. Such interference must be "substantial" or "unreasonable" and may or may not take the form of physical damage.

If animals kept by a rewilder are in some way adversely impacting a neighbour's enjoyment of their land and an amicable solution cannot be found, the neighbour could potentially bring an action in nuisance. This would be a civil claim and could lead to an order requiring the rewilder to stop the nuisance and/or to pay damages to the neighbour.

Further information about nuisance and its potential relevance to rewilders is provided in the *Rewilding in England & Wales: Liability to Neighbouring Landholders* note.

## 5. LIABILITY UNDER THE ANIMAL ACT 1971

The *Animals Act 1971*<sup>2</sup> (the “**Animals Act**”) sets out certain circumstances in which the “*keeper*” of an animal can be held liable for damage or injury caused by animals – without any need for a finding of fault or breach of duty on their part.

Liability under the Animals Act is civil liability meaning that it could give rise to an order to pay monetary damages to the injured party. Rewilders should consider whether their third party liability insurance would cover the payment of such damages.

There are four broad questions a rewilder should consider when assessing liability under the Animals Act:

- 1) Who is the “keeper” of the animal (if anyone)?
- 2) Does the animal belong to a “dangerous species” or not?
- 3) Is a defence available?
- 4) Does the fact pattern fall within one of the specific scenarios covered in the Animals Act?

These four questions, together with some practical steps that can be taken to limit potential liability under the Animals Act, are covered below.

### Who is the “keeper” of the animal (if anyone)?

Only the “keeper” of an animal may be liable for any damage caused by the animal, under the Act. The “keeper” is the person that, broadly speaking, “owns the animal or has it in his possession”<sup>3</sup>. Once someone is the keeper of an animal, they will remain so until someone else becomes the keeper, even if they abandon the animal in question.

It is possible for more than one person to be the keeper of an animal at the same time.

Determining who the keeper of an animal is can be a very fact-specific assessment. The key question seems to be whether the relevant individual has at least *some* degree of control over the animal. If no one has a degree of control over the animal and at no stage in the past has had a degree of control, it is likely that the animal is “*living wild*”, does not have a keeper, and no liability under the Animals Act can arise if it causes damage.<sup>4</sup>

### EXAMPLE 1

**An area of rewilding land is left open and unfenced and wild animals are able to enter and exit the land as they see fit. A herd of wild deer that has been living on the land then roams onto a nearby road, and one hits and severely damages a passing car.**

The deer that caused the damage is a wild animal and does not have a keeper. This means that no one will be liable under the Animals Act for the damage caused to the car.

If the deer were intentionally kept in a deer park and subsequently escaped, then it would not suddenly be “*living wild*” and the owner of the deer could potentially be held liable for the damage (subject to the other necessary elements to establish liability under the Animals Act being met).

Where a person has at least *some* control over the animal (e.g., because they introduced it into an enclosed rewilding project) or has erected fencing to keep the animal within the project grounds, they may well be considered as the keeper and be held liable for any damage.

The rewilder will, therefore, be the keeper of animals that they legally own or physically possess (but not legally own) – in which case they could, in principle, be liable for damage caused by that animal.

### Does the animal belong to a “dangerous species” or not?

Once the keeper of the animal that caused the damage or injury has been confirmed, it must be established whether the animal belongs to a “*dangerous species*”.

Under the Animals Act, all species are divided between those that are “*dangerous*” and those that are not. This distinction is important as it may change the degree to which the “*keeper*” is held liable. As to animals belonging to a “*dangerous species*”:

- A “*dangerous species*” is a species which is not commonly domesticated in the British Islands and whose fully grown animals are, unless they are restrained, likely to cause severe damage<sup>5</sup>. Under the Animals Act ‘species’ is defined to include “*sub-species and variety*”, meaning that this assessment may be done at this sub-species or variety level.
- Unfortunately, there is no set list of “*dangerous species*”, and case law has generally focused on horses and cattle, many species of which are commonly domesticated in Great Britain (and therefore not “*dangerous species*”). But a rewilding project may involve animals that are not obviously “*commonly domesticated*” – e.g., certain breeds of historic breeds of cattle or Konik ponies – and that could cause severe damage, because of their temperament or their size. In that case, the animal could possibly be considered a “*dangerous species*” but it is unclear.<sup>6</sup>

The position of animals such as European bison (which have never been commonly domesticated in Great Britain) is much clearer and it is very likely that such animals would be classified as a “dangerous species” under the Act.

- Where an animal belongs to a “dangerous species” and causes damage, “any person who is a keeper of the animal is liable for the damage”<sup>7</sup>. Liability is “strict” in these cases, which means that it will not matter whether or not the keeper is at fault for the damage caused by the animal or whether or not they even realise that it belongs to a “dangerous species”. There are, however, certain defences available (see practical example 4 below).

## EXAMPLE 2

**As part of a rewilding project large herbivores no longer commonly domesticated in the British Isles are reintroduced, to roam across a large, enclosed landscape, semi-wild, with very minimal human interference. One of the animals escapes the boundaries of the project, crosses a nearby road and is hit by a car, causing serious injury and damage.**

These herbivores could arguably be a “*dangerous species*”, as they are not commonly domesticated in the British Isles and could do severe damage, on account of their size. While the herbivores are living “*semi-wild*”, the rewilder may have exercised *some* degree of control, by introducing them to the rewilding project– and could therefore be the “*keeper*” and strictly liable for the injury/damage caused (unless a defence applies).

However, this is not a clear-cut situation and case law does not offer much guidance here. The key question is whether a species that is no longer commonly domesticated is the same as a species that has never been commonly domesticated. This may be an issue that a court would need to clarify – unless the law itself is amended and clarified.

As to animals not belonging to a “*dangerous species*”, the “*keeper*” will be liable for the damage caused by the animal, again on a strict liability basis – but only if *all three* of the following conditions are met<sup>8</sup>:

- the damage is of a kind likely to be caused by the animal in question unless restrained, or is likely to be severe if caused by the animal;
- the likelihood of the damage is due to characteristics which are not normally found in the species, or are not found except at particular times or in particular circumstances; and
- those characteristics were known to the keeper.

Livestock and other farm animals (including domestic cattle, horses, sheep, pigs, goats, poultry etc.) will in most cases not be animals belonging to a “*dangerous species*”, as they are commonly domesticated. But this could be different for other animals that form part of a rewilding project. As noted above, this has not been considered in detail by the law or in any reported cases.

## EXAMPLE 3

**As part of a rewilding project highland cows are introduced. Fences are erected but one of the cows, which is known to misbehave and has escaped before, breaks through, wanders onto neighbouring land and severely damages crops and property.**

Highland cows are unlikely to be “*dangerous species*” because they are commonly domesticated in Great Britain. And in this instance, as the cows are fenced in, the rewilder is clearly a “*keeper*”.

If it can be established that it was known by the keeper that this particular cow was more likely to escape than an average highland cow and that the damage it would cause if it escaped was likely to be severe (e.g., on account of its size) or was likely to be of the

kind suffered, liability could be established under the Animals Act, for the damage caused. This might either be under the general liability for damage caused by animals of which they are the keeper, or the more specific liability for straying livestock (please see Question 4 below), unless a defence applies.

### **Is a defence available to the keeper?**

A keeper has three separate defences available in order to avoid being held fully liable for the damage caused by animals in the circumstances described above. These are the same for dangerous species and for non-dangerous species.

The three defences are that:

- The person suffering the damage is wholly or partly to blame for that damage. This could be the case where someone teases a dog and is then bitten (albeit it will be difficult to prove this if there are no other witnesses).
- The person suffering the damage voluntarily accepted the risk of it occurring. This, in brief, means that they appreciate the risk, but go ahead anyway.<sup>9</sup>
- The person suffering the damage was trespassing. This generally means that the keeper of an animal will not be held liable for damage caused by that animal to a person that is not (explicitly or implicitly) invited onto the land on which the animal is kept<sup>10</sup>.

See the “practical steps” box at the start of this note for discussion of practical steps that a rewilder may wish to take to increase their chances of being able to rely on one of these defences.

## EXAMPLE 4

**A rewilding project incorporates a private sanctuary into which European bison are introduced and allowed to roam. The sanctuary is fenced off with warnings against trespass. A passing walker ignores these and climbs the fence, then is injured by the bison.**

The rewilder will be the “keeper” and the bison are arguably, but not definitively, “dangerous species”. Irrespective of that, though, the sanctuary was fenced off and, in spite of being warned, the walker trespassed onto the land. The “keeper” will likely be able to rely on the trespassing defence and avoid liability under the Animals Act.

Note that the Act confirms that “any livestock belongs to the person in whose possession it is”.

- That said, there are a few defences available to the person to whom the livestock/horses belong, in case a specific scenario applies, namely<sup>15</sup>:
  - (i) if the person suffering the damage is to blame for it him/herself;
  - (ii) if the livestock/horses strayed from a highway, where they had a right to be; or
  - (iii) if the straying would not have occurred if the rewilder or occupier of the land had not breached a duty to put up fencing<sup>16</sup>.

### Conclusion regarding the Animals Act

It follows that, where a rewilding project involves animals, then it is likely that the rewilder will come under the definition of the “keeper” of those animals, to the extent that they retain some degree of control over the animals. In those circumstances, the rewilder must carefully consider whether those animals belong to “dangerous species” or not.

If they do, then the rewilder, as the keeper of those animals, will be strictly liable for any damage caused by those animals.

If they do not, then the rewilder may still be strictly liable, but only if the three additional conditions are satisfied – in essence if a particular animal has characteristics not common to the species which make it likely that it would cause severe damage or the type of damage suffered, and the keeper knew about these characteristics.

A rewilder can avoid liability if at least one of the three defences set out under section 3, above, applies.

Separately, a rewilder may be held liable for damage caused by straying livestock/horses, unless one of the three defences set out in under section 4 (b) (i)-(iii) is available.

### Do any of the specific scenarios apply?

There are also some more specific scenarios in respect of which liability for animals can arise, namely:

#### (a) Dog attacks:

- The Animals Act specifically makes the keeper of a dog liable if it kills or injures livestock<sup>11</sup>.
- A rewilder/livestock owner can use the Animals Act to avoid being held civilly liable for killing or injuring a dog that is “worrying or about to worry” their livestock if certain conditions are met<sup>12</sup>.

#### (b) Straying livestock (cattle, horses, sheep, pigs, goats, poultry, and deer not in a wild state):

- Where livestock strays onto land owned or occupied by another, or where horses are on land without lawful authority, the person to whom the livestock/horses belong<sup>13</sup> will be liable for damage caused to the land or property on it, as well as any expenses the rewilder or occupier of that land has had to incur in keeping the livestock or horses pending their return to the original owner<sup>14</sup>.

*Thank you to Clifford Chance LLP for their legal support in producing this briefing note.*

*This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. You should not assume that the case studies apply to your situation and specific legal advice should be obtained.*

*The hyperlinks to legislation, guidance and various other external sources within this briefing are correct as of 15 July 2022.*



## ENDNOTES

1. See e.g., <https://cqms-ltd.co.uk/farmer-sentenced-after-walker-killed-by-cattle/>
2. Other animal-related legislation which may be of relevance to rewilders includes the [Dangerous Wild Animals Act 1976](#), which regulates issues around licensing for “dangerous wild animals”, and the [Wildlife and Countryside Act 1981](#) (the “W&C Act”), which concerns potential liability for actions undertaken against a “wild animal” (e.g. hunting, trapping, capturing and killing). This note, however, focuses solely on liability under the Animals Act.  
  
Each of these Acts have specific definitions and may overlap with each other; a single animal may, depending on the circumstances of the case, fall under multiple pieces of legislation. A pheasant may, depending on how it is hatched, protected, kept etc. be a “wild bird” for the purposes of the “W&C Act”, in which case no liability can arise for any damage it causes, or “livestock”, in which case strict liability can arise for its keeper, under the Animals Act.
3. Section 6(3), Animals Act.
4. Note that a landholder could be liable under nuisance for damage caused to neighbouring land by wild animals on their land. If a rewilders is considering taking action *against* a wild animal they should consider potential liability for such action under the W&C Act. Rewilders are therefore advised to consider their position and, for instance, ensure that they have the right licence in place before pressing ahead with, for example, culling badgers.
5. Section 6(2), Animals Act.
6. In *Mirvahedy v Henley & Henley*, the Court

hypothesised that tigers and Indian elephants would be “*dangerous species*”; the former because of their nature and the latter because of the damage they could cause, on account of their weight/bulk. In addition, neither species is “*commonly domesticated in the British Islands*”. *Mirvahedy v Henley & Henley* [2003] UKHL 16, para 67 Hobhouse LJ.

7. Section 2(1), Animals Act.
8. Section 2(2), Animals Act.
9. See *Goldsmith v Patchcott* [2012] EWCA Civ 183 at para. 50, where the Court of Appeal held that the claimant, who had been thrown off a horse and suffered significant injuries, had been aware that there was a possibility of the horse bucking, but had accepted that risk and went ahead anyway. The fact that the horse had bucked more violently than the rider had anticipated, was immaterial.
10. It should be noted that in these circumstances the landholder could still be liable to the trespasser under the Occupier’s Liability Act 1984.
11. Section 3, Animals Act. Under the Animals Act, “livestock” means cattle, horses, sheep, pigs, goats, poultry, and deer not in a wild state (see section 11, Animals Act).
12. Section 9, Animals Act. This exception applies where either (a) the dog is worrying or is about to worry the livestock and there are no other reasonable means of ending or preventing the worrying; or (b) the dog has been worrying livestock, has not left the vicinity and is not under the control of any person and there are no practicable means of ascertaining to whom it belongs.
13. This is a slightly narrower concept than “keeper”, but includes anyone who is in possession of the livestock or horse.
14. Section 4, Animals Act.
15. Section 5(1) and 5(4)-(6), Animals Act.
16. See the *Rewilding in England & Wales: Public Access* briefing for information on when such a duty can arise.

## WHO'S BEHIND THIS GUIDANCE?



This note is part of a range of information produced by Rewilding Britain and The Lifescape Project to provide practical guidance to rewilders. Each is designed to help rewilding practitioners across Britain overcome common barriers in their rewilding journey, as identified through conversations with members of our Rewilding Network.

Rewilding Britain's Rewilding Network provides a central meeting point for landowners, land and project managers and local groups in Britain, offering opportunities for collaboration and allowing smaller landowners to take on larger-scale rewilding together. If you find this useful, please consider joining the Network, where those in Britain can explore these issues further with others in the same boat.



The Lifescape Project is a rewilding charity using a multi-disciplinary approach to achieve its mission of catalysing the creation, restoration and protection of wild landscapes. Lifescape's legal team is working to support rewilders in understanding how the law applies to their activities and pursuing systemic legal change where needed to support the full potential of rewilding. These notes form part of Lifescape's Rewilding Law Hub which aims to provide a legal resource centre for those wanting to manage land in accordance with rewilding principles.



### JOIN THE CONVERSATION

We'd love to hear what you've found useful in these notes and where we can help fill gaps in the guidance so that we can make sure they remain an up-to-date practical tool for rewilders.

Get in touch with us at:  
**Rewilding Britain: the Rewilding Network,**  
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