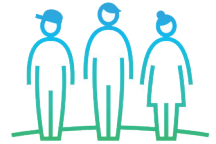


LIABILITY TO VISITORS AND NEIGHBOURS



CORE TOPICS:

- Responsibilities owed by landowners to visitors and third parties on their land, and how to mitigate those risks.
- Criminal liabilities of landowners, and how to discharge criminal liability.

KEY TAKEAWAYS:

- “Occupiers” of land must take reasonable care to protect visitors and third parties from risks present on their land.
- Separately, landowners who “conduct an undertaking” may need to comply with health and safety legislation which requires them to conduct their undertaking in such a way so that they do not expose employees and third parties to health and safety risks.
- As a general principle, landowners etc, must not use their land in a way which negatively impacts their neighbour’s enjoyment of their land to an extent that is more than tolerable.

TABLE OF CONTENTS

Part A: Responsibilities owed to visitors and third parties accessing land

1. Occupiers’ liability

- 1.1 Who can be classed as an “occupier”?
- 1.2 Persons entering onto the premises
- 1.3 Reasonable care
- 1.4 Dangers due to the state of the premises
- 1.5 Freely-consented risks
- 1.6 Contributory negligence
- 1.7 Notices

2. General Duty of Care

3. Criminal liabilities under Section 3 Health and Safety at Work Act 1974 (the “HSWA”)

- 3.1 Scope of Section 3 of the HSWA
- 3.2 What is an “undertaking” and when will HSWA apply to landowners?
- 3.3 What is required to comply with Section 3 HSWA duty?
- 3.4 How can you discharge liability under the HSWA?
- 3.5 What happens when there is a breach of the HSWA?

Part B: Responsibilities and duties owed to neighbouring land

4. Neighbouring land

- 4.1 Application in practice

PART A: RESPONSIBILITIES OWED TO VISITORS AND THIRD PARTIES ACCESSING LAND

Responsibilities and a duty of care owed to visitors and third parties accessing land may arise under (i) the Occupiers' Liability (Scotland) Act 1960; (ii) a general duty of care; and (iii) health and safety legislation. Each of these are described below.

1. OCCUPIERS' LIABILITY

The relevant law in Scotland is the *Occupiers' Liability (Scotland) Act 1960* (the "1960 Act"). The 1960 Act sets out the level of care required to be demonstrated by the person (or body) who occupies or controls land or premises to any third party who may access the property.

1.1 Who can be classed as an "occupier"?

An occupier is anyone occupying or having control of land or premises. Possession of the property is a factor. This means that, in addition to the owner of a property, the occupier could be a tenant. Separate from possession, a person can still be considered the "occupier" if they have the power to exclude others from the property. It is possible to have more than one occupier in the eyes of the law and each could have liability apportioned if they exercise different degrees of control at the same time.

1.2 Persons entering onto the premises

The duty of care on occupiers can generally be considered (as a starting point) to apply to all persons, whether or not they have permission, entering onto their land or premises, unless (i) the duty of care is excluded by agreement between parties (including by a notice to visitors entering the land –

see below for further discussion);¹ or (ii) where the person has willingly accepted the risks associated with going on the property.²

1.3 Reasonable care

The duty owed by an occupier to a person on his/her premises is to take reasonable care to avoid acts or omissions which they could reasonably foresee may result in harm or injury. Each case is necessarily determined on its own facts and circumstances, with reasonableness being assessed according to what a reasonable person would have considered to be reasonable in the circumstances. Rewilders who are occupiers will be under this duty to take reasonable care.³

1.4 Dangers due to the state of the premises

The danger for which the occupier can be liable, must be one which is due to the state of the premises or to anything done or omitted to be done on them for which the occupier is legally responsible⁴ (unless exempted by agreement).⁵ Some relevant examples of potential dangers due to the state of the premises may include animals being kept on those premises or trees growing on the land being unstable and falling.

A failure by an occupier to exercise his or her responsibility may result in a claim for breach of the 1960 Act by an injured person. A distinction has to be made between the state of the premises and what a person wishes to do on the premises, e.g., an injury stemming from using an area of land for jumping motorcycles was not due to the state of the premises, but what the person chose to make of them. Specific advice should be taken on whether or not any particular rewilding activities amount to a danger.

1.5 Freely-consented risks

It is a defence for an occupier to argue that the person entering the land or premises, whether or not they have permission to enter, has willingly placed themselves in

a position where harm might result, whilst knowing the nature and extent of the risk they were taking.⁶ This is known as *volenti non fit injuria* – 'to one who volunteers, no harm is done'.

1.6 Contributory negligence

If an occupier has breached their duty of care and injury or damage has been suffered by a person, it will be a partial defence if the occupier was not totally to blame. If the injured person has contributed towards their injuries or damages by their own actions then they could be found contributorily negligent.⁷

1.7 Notices

Under the 1960 Act, an occupier is entitled to restrict or exclude by agreement their obligations towards persons on their land. Rewilders may therefore look to erect notices on their property in an attempt to limit or exclude liability. Signs being erected may alternatively go to demonstrating the exercising of reasonable precautions by the occupier that will assist in the event of an action being raised as a result of a warned risk. For example, a recent court case considered whether an occupier was liable for injury suffered by a third party who slipped on a slipway going into the sea. The accident occurred on the submerged part of the slipway. Warning signs had been erected and verbal warnings were given to indicate that the submerged walkway was slippery. The occupier was held not liable for the injury caused because it was determined that sufficient notice of the risk of injury had been given.⁸ Generally, the more specific a notice can be about a risk, the more likely it is to be of assistance to a rewilding if they face a claim.

If premises are used for business purposes, a notice excluding liability might fall foul of the Unfair Contracts Terms Act 1977 ("UCTA") and be ineffective. For example, if the occupier is charging for entry or running a visitor centre on site, UCTA states that any such disclaimers are void if they try to exclude or restrict liability in respect of death or personal injury.⁹ A notice may be valid for other loss or damage, but it would have to be fair and reasonable.

UCTA does not apply where visitors enter non-business premises for recreational purposes. Any notices erected by an occupier here, along with other precautionary measures such as risk assessments, will be taken into consideration when assessing whether they have met their duty of care under the 1960 Act.

EXAMPLE 1: ANIMALS

Occupiers who have animals loose on their land need to consider the risk they pose to visitors etc. and take simple and reasonable steps if they are aware that they may harm visitors. In terms of what “reasonable steps” may include, it might be helpful to read [the guidance produced by the Health and Safety Executive regarding the keeping of cattle in areas of land with public access and the practical steps that could be taken to limit the possibility of injury.](#)

To understand how the law applies in practice, it is interesting to look at a case under the 1960 Act dealing with occupier’s liability for animals. It concerned a dog that bit an employee of a vet surgery, who accessed the rear of the surgery property, via a neighbour’s garden (with the neighbour’s consent), to clean some windows of the surgery. The employee was bitten by one of two dogs present in the neighbour’s garden. (The bite eventually required amputation of the employee’s leg). The neighbours were found liable under the 1960 Act. There was a “foreseeable and not remote risk” that at least one of the dogs would show aggression towards a stranger appearing in the garden. The neighbours must have been aware of the risks and should have taken steps to remove the dogs prior to allowing the employee to enter the garden (or at least not permitted the employee to take access whilst the dogs were loose). These duties were of such a simple character that it led to a breach of the 1960 Act.

Separately, under the *Animals (Scotland) Act 1987*, a person could be liable for injury or damage caused

by certain species of animals even without deliberate or negligent conduct. This is covered in the *Rewilding in Scotland: Liability for damage caused by animals* note.

EXAMPLE 2: MAN-MADE STRUCTURES

Whether rewilding concerns the addition or removal of man-made structures, occupiers should always carry out a thorough risk assessment (including who might be affected by the actions and what risks the rewilding could be exposed to) and consider mitigation measures. Expert legal and technical advice should be sought on the specific facts and circumstances. This is because both can have unintended consequences in terms of liability: for example (i) a fence could be removed in part, but leave sharp, exposed post-ends, which could cause injury to visitors walking on the grounds; or (ii) the addition of a ha-ha (a sunken fence) to preserve an area from wandering wildlife could result in injury to those who are unaware of its existence.

A further unintended consequence could be the concealment of one man-made structure by another, for example if a raised bank is built and hides a pond behind, an occupier would have to ensure that visitors are sufficiently warned of its existence by signage, construction of a fence, or otherwise. Occupiers have a duty to take reasonable care to make sure that people entering the land will not suffer bodily injury from structures they have inadequately created or attempted removal of e.g. leaving a fence partially dismantled next to a footpath.

There are of course instances where man-made structures are necessary. For example, fencing around electricity transformers is expected to be retained even if the surrounding area is subject to rewilding.

EXAMPLE 3: PUBLIC RIGHTS OF WAY

Owners of land subject to a public right of way may owe a duty of care to users of public rights of way under the 1960 Act.¹⁰ A judge has decided that the duty under the 1960 Act does not extend to an active duty to maintain a public right of way.¹¹

Should a rewilding decide to construct an artificial path then they will need to ensure the path is obvious and part of the landscape and that anything unusual about the path is properly notified in advance.¹² It is also expected that any path is constructed to accepted and normal standards.¹³

A landowner may be liable for any danger created by them on a public right of way – on the basis that would engage their duty of care above.¹⁴

ARE THERE PRACTICAL STEPS THAT CAN HELP MITIGATE THE RISK TO REWILDERS?

There are a number of steps to take that can show you have complied with your duty of care to visitors and third parties and therefore won’t be liable for any harm suffered on your land. For example:

- Carrying out a detailed and specific risk assessment for all aspects of the project;
- Obtaining liability insurance to cover risks;
- Excluding/limiting liability by contract or notice to the extent possible; and
- Meeting required standards including of reasonableness and keeping evidentiary records of having done so.

2. GENERAL DUTY OF CARE

To a large extent, this functionally overlaps with the law of occupiers' liability. The general duty of care is based on the principles of (i) foreseeability (i.e., how predictable was it that damage or other harm could happen); (ii) relationship between the parties (e.g., landowner and visitor); and (iii) the equity of the case (i.e., whether in all the circumstances it is just and reasonable to impose a duty of care on the landowner / occupier in respect of the other). A breach of the general duty of care could be pled as an alternative basis of liability to occupiers' liability. However, in recent cases, the approach to both occupiers' liability and the general duty of care has been similar and we have therefore not covered this general duty of care separately in this note.¹⁵

3. CRIMINAL LIABILITIES UNDER SECTION 3 HSWA

3.1 Scope of section 3 Health and Safety at Work Act 1974 (the "HSWA")

In circumstances where rewilders carry out rewilding activities as part of a business or enterprise, there may be additional duties in the context of health and safety laws.

Whilst the HSWA is primarily concerned with the legal obligation of an employer towards its employees to safeguard their health and safety at work,¹⁶ section 3 of the HSWA also places an obligation on employers and self-employed persons for third parties (such as visitors) whose health and safety may be impacted by the activities of that business or enterprise. Employers or those that are self-employed are required to conduct their undertakings in such a way as to ensure, so far as is reasonably practicable, that third parties who may be affected by their activities are not exposed to risks to their health or safety.¹⁷ For section 3 to apply, there must be:

- a duty-holder – either an employer or a self-employed person;
- a risk to the health or safety of a person who is not the employee of the duty holder or the self-employed duty holder themselves; and
- that risk must arise from the conduct of the duty holder's undertaking.¹⁸

The scope of the duty under section 3 is very broad. The HSWA does not distinguish between visitors and non-visitors and applies generally to third parties. Therefore, employers and self-employed persons must consider the health and safety of any individual regardless of whether they are invited onto the land. In certain high-risk industries, the duty to ensure individuals are not exposed to health and safety risks may present itself more readily. For example, where forestry work is involved, individuals have a responsibility to manage public safety such that landowners and forestry works managers must plan and coordinate safety measures, and operators on forest sites must implement them – proximity areas, harvesting sites and haulage routes should be carefully considered.¹⁹

Note specifically that in the past, the HSE have prosecuted a farmer (in England) for breaching section 3 HSWA, following the death of a walker who was killed by cattle when on a public footpath situated on that farmer's field.²⁰ It is important to note that it is not necessary for an incident to have occurred, or for an individual to have been injured, for a breach of HSWA to be established. It only needs to be established that there was a risk of injury or damage to health.

The broad applicability of section 3 is balanced by a policy developed by the Health and Safety Executive (HSE), Britain's national regulator for workplace health and safety. The policy aims at guiding enforcing authorities to exercise their discretion by focusing on 'health and safety priorities', such as where there is a high level of risk involved (e.g., major hazards and construction) or whether enforcement would be in the interests of justice (such as those of the injured or bereaved),²¹ and to give less priority in other areas.²² In certain risk areas (e.g., reservoirs or where an adventure activity is

undertaken), the HSE will generally not start to investigate injuries to non-employees, or complaints about risks to non-employees, unless the concerns highlighted in the preceding sentence are present.²³

3.2 What is an "undertaking" and when will HSWA apply to rewilders?

An 'undertaking' in this context means an enterprise or business. In a rewilding context, rewilders that receive any commercial benefit from their activities (whether it be, for example, from running yoga retreats, wildlife safaris or farming) are likely to fall within the scope of this duty under the HSWA.

3.3 What is required to comply with section 3 HSWA duty?

Employers and self-employed persons must ensure, so far as is "reasonably practicable", that they do not expose third parties to health and safety risks. Such risks may encompass a broad range of issues relevant to land managers (such as rewilders) including injury caused by manmade or natural features of the land, injury caused by animals and other risks to individuals, such as water pollution. It is important to note that a third party does not in fact have to be harmed for an offence to be committed under HSWA – there only has to be a risk of harm for liability to be found.²⁴

Appropriate risk assessments must be carried out to identify the risks to the health and safety of third parties as a result of an undertaking²⁵ and landholders should ensure that these are implemented / reflected in working practice and regularly updated. The risk assessment should include:

- identifying what could cause injury or illness in the business (hazards);
- deciding how likely it is that someone could be harmed and how seriously (the risk); and
- taking action to eliminate the hazard, or if this isn't possible, to control the risk.

Depending on the nature of activity being undertaken, there is guidance published by the HSE to assist individuals in complying with the standards required by the law to keep their land safe for others. Rewilders carrying out business activities should follow such guidance and establish a safety management system based on acknowledged good practice. Two particularly relevant guides for rewilders are the Agriculture Health and Safety Guidance Note²⁶ and the Cattle and Public Access in Scotland: Advice for Farmers, Landowners and Other Livestock Keepers note.²⁷

3.4 How can you discharge liability under the HSWA?

To discharge the duty under section 3, the duty holder must act reasonably and balance the risk to others against the sacrifice (e.g., the money, time or resources) involved in taking the measures needed to avert the risk. If the risk is grossly disproportionate to the sacrifice, such as the risk being insignificant relative to the sacrifice, the duty holder is not required to take any further measures and so discharges the duty.²⁸ This is a balancing exercise and highly fact dependent.

3.5 What happens when there is a breach of the HSWA?

A breach of the health and safety laws under section 3 can give rise to criminal liability, resulting in a fine not exceeding £20,000 and/or imprisonment for a term not exceeding 12 months (on summary conviction) or an unlimited fine and/or imprisonment for a term not exceeding 2 years (on indictment).²⁹ If you are intending on undertaking commercial activities on your land, please consult the relevant legal, industry and safety specialists for further advice.

PART B: RESPONSIBILITIES AND DUTIES OWED TO NEIGHBOURING LAND

4. NEIGHBOURING LAND

In addition to the rules under the 1960 Act, occupiers are also bound by the common law of nuisance. Unlike in England, there is no distinct law in Scotland of 'public nuisance', so this section encompasses all instances of nuisance.

The freedom to do as one pleases with their property has to be balanced with the duty to avoid causing loss or inconvenience (known as "nuisance") to neighbours. In cases where there is conflict between the two, whether nuisance is established will be a question of fact and degree.³⁰

There is a lack of modern Scottish case law on the position. However, it is generally understood that for nuisance to be established, there needs to be some form of emanation (e.g., noise, smell,³¹ etc.) from the occupier's land that results in unreasonable interference with a neighbour's enjoyment of their land. Importantly, the occupier is generally required to be at fault,³² the nuisance must be continuing and the neighbour must have suffered more than they could reasonably be expected to tolerate.³³

A court would take many factors into account when determining whether there is a nuisance established in law: this includes the motive of the occupier, the purpose of the occupier's activity and the locality, duration and the intensity of the alleged nuisance.

Management of bodies of water within a rewilders land (as an example) could involve other legal rules other than 'nuisance', depending on the circumstances (some of which are covered below). Other legal rules that may be engaged include the general duty of care mentioned above.

As a landowner, you need to take care to avoid affecting (for example) the structural stability of neighbouring property

(whether built or unbuilt). If that is caused by your land or something within your land, there is a risk of liability.³⁴

4.1 Application in practice

In most of the circumstances described below, attempts by neighbours to bring legal action for damages (whether for nuisance, a breach of the general duty of care, or otherwise) will be a last resort. There is likely to have been lots of prior interaction and discussions about the nuisance or other alleged breach being caused and practical ways to resolve it. However, should such discussions fail to lead to a resolution, it is possible that a neighbour may have legal rights as described below and it is worth landowners/occupiers keeping this in mind.

EXAMPLE 1: FLOODING

Rewilders may cause bodies of water and groundwater levels to revert to their natural state, which may cause localised flooding. This naturally comes with a danger that the flooding will not be restricted to an occupier's own property and will interfere with a neighbour's land.³⁵

If an occupier of land interferes with a natural channel of water (e.g. a river or stream), there may be liability where, as a result of that interference, the water does not continue to be adequately carried off, including where there is excess water due to extraordinary rainfall.³⁶ Similarly if a rewilders activities cause the water table to rise and the water overflows into neighbouring property, the rewilders may be liable for any damage caused.

If trees (new or old) are growing along a burn, debris may drop into the water and cause a blockage. If this is a regular occurrence then it could be argued that any flooding is a foreseeable risk of the occupier failing to maintain their property. Should that flooding interfere with a neighbour's enjoyment of their property, a claim in nuisance could potentially arise although, as always, it would depend on the facts of the case.

Furthermore, where a river flows through an occupier's property (or they own a loch which forms part of the same water system as a river), the occupier must not pollute the water or transmit water of inferior quality downstream.³⁷

EXAMPLE 2: TREE BRANCHES AND ROOTS

A vital part of any natural space is tree and plant life. Under Scots law, branches of trees overhanging the boundary of the land on which they grow will be subject to the law of 'encroachment', which applies e.g. any time a tree breaches the boundary of neighbouring property.

The position is the same in relation to roots where they spread under neighbouring land. If caught early enough, the neighbour may simply cut off the branches and hand them back to the tree owner. Whilst in theory this also applies to roots, extra care should be taken, as damaging the tree as a whole could open the neighbour up to liability.

If the problems continue, the consequences could be serious, particularly if there are buildings on the neighbouring land. For example, roots may grow under neighbouring land and cause subsidence to buildings, resulting in a substantial financial outlay for the tree owner, if they have not taken reasonable steps to maintain the roots and prevent damage from occurring. Note that what will be considered as "reasonable steps" will always be fact specific and there is no clear test for this.

Rewilders should carefully consider whether new growth should be encouraged at the property boundaries or at least what species may cause issues with neighbouring land and consider engaging with neighbours at an early stage.

EXAMPLE 3: LANDSLIDES

Scotland's landscape has a variety of landscape features that can be considered dangerous to people, animals and infrastructure. When disturbance to these volatile natural structures by a landholder causes damage to neighbouring property, the owner of such neighbouring property may be able to claim damages generally to the extent that it was reasonably foreseeable that such damage would be caused to the neighbouring property.³⁸

Peatlands are particularly vulnerable to landslides. This is typically a response to intense rainfall events, but equally it could be due to human intervention. If a landowner has taken any of the actions to rewet peatland or has removed structures to allow a river to take its natural course, they could be liable for any resulting damage. As this is a one off event, it is more likely that any claim against the occupier and/or landowner would be framed as breach of a duty of care, rather than nuisance.³⁹ In these situations, an examination of the cause of the landslide would be required to determine whether the occupier/landowner is likely to be liable for any damages.

Further, if a landowner has knowledge of a potential risk of landslide and fails to act, they could still be liable for damages even if the landslide occurs because of a natural event such as heavy rainfall.⁴⁰

Thank you to Burness Paull 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 January 2023.

ENDNOTES

1. Occupiers' Liability (Scotland) Act 1960, s2(1). Note that there might be a specific statutory standard of care that are higher than the duty under the 1960 Act. Nothing in the 1960 Act affects that higher standard: s2(2).
2. Occupiers' Liability (Scotland) Act 1960, s2(3).
3. It is well established that there is no duty on an occupier of land to provide protection against obvious (or familiar) and natural dangers: see *Leonard v Loch Lomond and the Trossachs National Park Authority* [2014] Rep LR 46, para [16] onwards and authorities cited therein (albeit mostly pre- 1960 Act authorities).
4. The law does appear to be underpinned by policy rationale that takes those walking up hills to have accepted a degree of risk. From *Leonard*, it appears this risk is taken to be on the walker for obvious hazards at least.
5. Occupiers' Liability (Scotland) Act 1960, s2(1).
6. See Occupiers' Liability (Scotland) Act 1960, s2(1).
7. See, for example, *Lowe v Cairnstar Ltd* 2020 SLT (Sh Ct) 151.
8. *McCann v Dumfries and Galloway Council* [2021] SC EDIN 36.
9. Unfair Contract Terms Act 1977, s16.
10. So long as the owner of the land subject to the right of way is an 'occupier' for the 1960 Act: *Johnstone v Sweeney* 1985 SLT (Sh Ct) 2. The Sheriff in this case did note that he found the decision a difficult one and it is a first instance decision in Scotland.
11. *Johnstone* (above).
12. Consider the case of *Graham v East of Scotland Water Authority* 2002 SCLR 340.
13. *Leonard* (above).

14. *Johnstone v Sweeney* (above).
15. See, for example, *Mackenzie v The Highland Council* [2022] SC EDIN 8 (where a case on both bases was refused for the same reasons); *Phee v Gordon* 2013 SC 379, para [36], where the Court of Session noted it is appropriate to adopt a similar approach to the calculus of risk as in common law negligence (i.e. general duty of care); *Hill v Lovett* 1992 SLT 994.
16. Section 2, HSWA. The duty of employers to employees under HSWA is outside the scope of this briefing note.
17. Sections 3(1) and 3(2), HSWA. Please note that under section 3(2) self-employed persons have a duty to ensure that they themselves are not exposed to health and safety risks. The HSWA also sets out various other duties such as those owed by employers towards employees, employees towards themselves and to each other, and certain self-employed persons towards themselves and others. These duties are not covered by the scope of this briefing note. Please seek legal advice if needed.
18. [Health and Safety Executive: Scope and application of section 3 HSWA.](#)
19. [Health and Safety Executive: Managing public safety.](#) For further information, please see: <https://www.hse.gov.uk/treework/site-management/public-access.htm>
20. Health and Safety Executive: [Farmer sentenced after walker killed by cattle.](#)
21. [Health and Safety Executive: Priorities for enforcement of Section 3 of the HSWA 1974 - July 2003 \(rev April 2015\)](#)
22. [Health and Safety Executive: Guidance for FOD in responding to \(non-construction\) public safety incidents where Section 3 of HSWA applies](#)
23. [Health and Safety Executive: Further information.](#)
24. [Health and Safety Executive: Health and safety at work: criminal and civil law](#)
25. The Management of Health and Safety at Work Regulations 1999, section 3
26. [Health and Safety Executive: Agriculture health and safety.](#)
27. [Cattle and Public Access in Scotland: Advice for Farmers, Landowners and Other Livestock Keepers](#)
28. Health and Safety Executive: Proving the offence; *Edwards v National Coal Board* [1949] 1 KB 704, CA; *Austin Rover Group Ltd v HM Inspector of Factories* [1990] 1 AC 619, HL, <https://www.hse.gov.uk/enforce/enforcementguide/court/rules-prove.htm#fn4>
29. Section 33(1)(a) and Schedule 3A, HSWA.
30. *Watt v Jamieson* 1954 SC 56.
31. E.g. consider *MacBean v Scottish Water* [2020] CSOH 55.
32. *RHM Bakeries v Strathclyde RC* 1985 SC (HL) 17.
33. *Watt v Jamieson* (above).
34. Although an English court decision, consider *House Maker (Padgate) Ltd v Network Rail Infrastructure Limited* [2022] EWHC 1482 (TCC).
35. There is a more urban (albeit English law) example of a recent court decision regarding damage suffered by a neighbour due to a broken drain, leading to flooding, on National Rail's land: *The House Maker (Padgate) Limited v Network Rail Infrastructure* [2022] EWHC 1482 (TCC). This is of interest only in Scotland; any action in similar circumstances in Scotland may need to be framed differently.
36. *Corporation of Greenock v Caledonian Railway Co* 1917 SC (HL) 56
37. *Hunter and Aitkenhead v Aitken* (1880) 7 R 510; *Miller v Stein* (1791) Mor 12823.
38. *Leakey v National Trust for Places of Historic or Natural Beauty* [1980] QB 485. There is little authority on the applicability of this case in Scots law, however the general need for *culpa* (fault on the part of the defender) to be established means that the degree of fault required is perhaps wider in Scotland in any case.
39. The prospects of success for breach of duty of care may be challenging (although again this is likely to depend on the cause of the landslide and whether human interference with the natural landscape was involved). Other delictual (Scottish equivalent of tort) causes of action may be considered here if there is property damage. There may also be an insurance aspect to any such incident.
40. *Golman v Hargrave* [1967] 1 AC 645. See also, *Sabet*.



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,
www.rewildingbritain.org.uk/rewilding-network

The Lifescape Project: Elsie Blackshaw-Crosby,
elsie.blackshaw@lifescapeproject.org