

Occupier's Liability Act 1984

LAWS OF THE UNITED KINGDOM.

OCCUPIERS' LIABILITY ACT 1984 (1984 c 3)

An Act to amend the law of England and Wales as to the liability of persons as occupiers of premises for injury suffered by persons other than their visitors; and to amend the Unfair Contract Terms Act 1977, as it applies to England and Wales, in relation to persons obtaining access to premises for recreational or educational purposes.

[13 March 1984]

Northern Ireland. This Act does not apply; see s 4(3) *post*.

1 Duty of occupier to persons other than his visitors

(1) The rules enacted by this section shall have effect, in place of the rules of the common law, to determine-

(a) whether any duty is owed by a person as occupier of premises to persons other than his visitors in respect of any risk of their suffering injury on the premises by reason of any danger due to the state of the premises or to things done or omitted to be done on them; and

(b) if so, what that duty is.

(2) For the purposes of this section, the persons who are to be treated respectively as an occupier of any premises (which, for those purposes, include any fixed or movable structure) and as his visitors are-

(a) any person who owes in relation to the premises the duty referred to in section 2 of the Occupiers' Liability Act 1957 (the common duty of care); and

(b) those who are his visitors for the purposes of that duty.

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

(a) he is aware of the danger or has reasonable grounds to believe that it exists;

(b) he knows or has reasonable grounds to believe that the other is in the vicinity of the danger concerned or that he may come into the vicinity of the danger (in either case, whether the other has lawful authority for being in that vicinity or not); and

(c) the risk is one against which, in all the circumstances of the case, he may reasonably be expected to offer the other some protection.

(4) Where, by virtue of this section, an occupier of premises owes a duty to another in respect of such a risk, the duty is to take such care as reasonable in all the circumstances of the case to see that he does not suffer injury on the premises by reason of the danger concerned.

(5) Any duty owed by virtue of this section in respect of a risk may, in an appropriate case, be discharged by taking such steps as are reasonable in all the circumstances of the case to give warning of the danger concerned or to discourage persons from incurring the risk.

(6) No duty is owed by virtue of this section to any person in respect of risks willingly accepted as his by that person (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

(7) No duty is owed by virtue of this section to persons using the highway, and this section does not affect any duty owed to such persons.

(8) Where a person owes a duty by virtue of this section, he does not, by reason of any breach of the duty, incur any liability in respect of any loss of or damage to property.

(9) In this section-

"highway" means any part of a highway other than a ferry or waterway; in

"injury" means anything resulting in death or personal injury, including any disease and any impairment of physical or mental condition; and "movable structure" includes any vessel, vehicle or aircraft.

NOTES

General Note. The object of this section is to introduce a statutory duty of care in place of the rules of common law to trespassers and other entrants outside the scope of the Occupiers' Liability Act 1957 *ante*. The common law rules had become uncertain following the case of *British Railways Board v Herrington* [1972] AC 877, [1972] 1 All ER 749, HL, which modified the law relating to liability for damage or injury suffered by a trespasser but did not provide a clear principle applicable to the generality of cases. The five judgments did not give a consistent answer to the question of when a duty of care towards a trespasser can be said to arise and, when this is established, what the content of that duty may be said to be. References were made to the duty of common humanity rather than reasonable care, but it was not entirely clear what standard of duty the concept of humanity imposed.

The cases following the *Herrington* case (see *Pannett v P McGuinness & Co Ltd* [1972] 2 QB 599, [1972] 3 All ER 137, CA; *Westwood v Post Office* [1974] AC 1, [1973] 3 All ER 184, HL; *Penny v Northampton Borough Council* (1974) 118 Sol Jo 628, CA; *Harris v Birkenhead Corp'n* [1976] 1 All ER 341, [1976] 1 WLR 279) relied upon the concept of "humanity" but it was difficult to gather from them in precisely what way that concept differed from that of reasonableness.

The aim of this section is therefore to help to resolve the points of doubt that arose following the *Herrington* case and to combine in a single set of propositions the slightly different lines of argument adopted in that case. It removes the concept of "humanity" and replaces it with a "duty to take such care as is reasonable in all the circumstances of the case to see that he does not suffer injury on the premises by reason of the danger concerned" (sub-s (4) above). In

addition the new statutory duty is to apply not only to those who enter land without authority and are therefore technically trespassers, but also to those who enter without permission but with lawful authority, ie persons entering land subject to an access agreement or order in force under the National Parks and Access to the Countryside Act 1949, s 60(1), Vol 32, title Open Spaces and Historic Buildings (Pt 1), and persons exercising a private right of way. It does, however, exclude all persons using the highway, whether or not maintained at public expense (sub-s (7) above). The provisions of this section follow the Law Commission's recommendations in paras 21, 51 and 59 of their Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Law Com No 75; Cmnd 6428).

Sub-s (1): Person. Unless the contrary intention appears this includes a body of persons corporate or unincorporate; see the [Interpretation Act](#) 1978, [s 5](#), Sch 1, Vol 41, title Statutes.

Occupier. As to the persons who are to be treated as an occupier of any premises, see, by virtue of sub-s (2)(a) above, the Occupiers' Liability Act 1957, s 1(2) *ante*, ie those persons who would at common law be treated as an occupier. In general a person is an occupier if he has a sufficient degree of control over the state of the premises or over the activities of persons thereon, and, in order to be an occupier, it is not necessary for a person to have entire control over the premises, but it is sufficient for him to share the control with others; see *Wheat v Lacon & Co Ltd* [1966] AC 552, [1966] 1 All ER 582, HL; see also *H & N Emanuel Ltd v GLC* [1971] 2 All ER 835, CA; *Harris v Birkenhead Corp* [1976] 1 All ER 341, [1976] 1 WLR 279, CA; and *Jackson v Hall* [1980] AC 854, [1980] 1 All ER 177, HL. The expression "occupier" includes a person who has a licence entitling him to possession (*Stevens v London Borough of Bromley* [1972] Ch 400, [1972] 1 All ER 712, CA; *R v Tao* [1976] 3 All ER 65, CA) and a statutory tenant (*Brown v Ministry of Housing and Local Government* [1953] 2 All ER 1385), but not, it is thought, a person whose entry on the premises was unlawful and forcible (*Woodcock v South Western Electricity Board* [1975] 2 All ER 545). See, further, 34 Halsbury's Laws (4th edn) para 19.

Premises. The term "premises", though originally possessing a very limited meaning, ie the parts of a deed which precede the habendum, is widely used in the popular sense as including land, houses, buildings, etc; see, eg, *Metropolitan Water Board v Paine* [1907] 1 KB 285; *Whitley v Stumbles* [1930] AC 544, HL; *Brace v Read* [1963] Ch 88, [1962] 13 All ER 172; and *Maunsell v Olins* [1975] AC 373, [1975] 1 All ER 16, HL. In general "premises" would seem to have been construed as meaning a whole property in either one occupation or one ownership according to the context in which it is used; see, eg, *Cadbury Bros Ltd v Sinclair* [1934] 2 KB 389 at 393 (revsd on other grounds (1933) 103 LJKB 29), and *Brickwood & Co v Reynolds* [1898] 1 QB 95. Note that for the purposes of this section it includes any fixed or movable structure, see sub-s (2) above.

Persons other than his visitors. As to persons who are to be treated as visitors to an occupier of premises, see, by virtue of sub-s (2)(b), above, the Occupiers' Liability Act 1957, s 1(2) *ante*. A visitor, for the purposes of that Act, embraces those persons who are invitees or licensees at common law, that is anyone to whom the occupier gives any invitation or permission to enter or use the premises; see the note "Persons who would be treated as ... invitees or licensees" to the Occupiers' Liability Act 1957, s 1. *ante*, and see also 34 Halsbury's Laws (4th ed) para 20.

A duty owed by an occupier to "persons other than his visitors" covers those people who are outside the scope of the Occupiers' Liability Act 1957 *ante*, ie persons on his land without his invitation or permission, such as those who enter upon land without authority and are thereby technically trespassers, and those who enter land without the consent of the owner but with lawful authority, for example in exercise of a private right of way (*Greenhalgh v British Railways Board* [1969] 2 QB 286, [1969] 2 All ER 114, CA; *Holden v White* [1982] QB 679, [1982] 2 All ER 328, CA) or of a right of public access conferred by the National Parks and

Access to the Countryside Act 1949, s 60(1), Vol 32, title Open Spaces and Historic Buildings (Pt 1) (see s 1(4) of the 1957 Act). However, it will not cover persons using the highway, whether or not the way is maintained at public expense (sub-s (7) above; see also the recommendation of the Law Commission in para 51 of their Report (Law Com No 75; Cmnd 6428)).

Any danger due to the state of the premises or to things done or omitted to be done on them. This phraseology is similar to that used in the Occupiers Liability Act 1957, s 1(1) *ante* (see also the General Note to that section) and consequently this new provision has the same scope as that already applying in relation to the liability of an occupier towards a visitor. The precise effect of those words in the 1957 Act has been the subject of some dispute in that they could cover all claims for injuries on the occupier's premises arising from every kind of activity or omission on them irrespective of whether they are connected with the safety of those premises as such. But the view of the Law Commission in their report (Law Com No 75; Cmnd 6428) is that having regard to s 1(2) of the 1957 Act an activity or omission on the premises not in itself affecting their safety falls outside the scope of the 1957 Act, so that the liability in respect of such an act or omission falls to be determined by general principles of negligence at common law. Therefore the Law Commission recommended that any case in which the danger arises from some activity for which the person sought to be made liable is not responsible in his capacity as an occupier of the premises will continue to be treated in accordance with the ordinary principles of negligence at common law and not under the above section.

Sub-s (3) : Reasonable grounds to believe. It is submitted that these words require not only that the person in question has reasonable grounds to believe but also that he does actually believe; *R v Banks* [1916] 2 KB 621, [1916-17] All ER Rep 356, and *R v Harrison* [1938] 3 All ER 134, 159 LT 95; and see also *Nakkuda Ali v Jayaratne* [1951] AC 66, PC.

The existence of the reasonable grounds and of the belief founded on it is ultimately a question of fact to be tried on evidence and the grounds on which the person acted must be sufficient to induce in a reasonable person the required belief; see in particular, *McArdle v Egan* (1933) 150 LT 412, [1933] All ER Rep 611, CA; *Nakkuda Ali v Jayaratne* *supra*; *Registrar of Restrictive Trading Agreements v W H Smith & Sons Ltd* [1969] 2 All ER 1065 at 1070, [1969] 1 WLR 1460 at 1468, CA per Lord Denning MR; and *IRC v Rossminster Ltd* [1980] AC 952, [1980] 1 All ER 80 at 84, 92, 93, 103, 104, HL.

He knows or has reasonable grounds to believe that the other is in the vicinity of the danger. For a case where it was held that an occupier is entitled to neglect a bare possibility that trespassers may come to a particular place on his land but is bound at least to give consideration to the matter when he knows facts which show a substantial chance that they may come there, see *Southern Portland Cement Ltd v Cooper* [1974] AC 623 at 644, [1974] 1 All ER 87 at 97, 98.

The risk is one against which ... he may reasonably be expected to offer the other some protection. It will be noted that the duty towards trespassers is of a quite different character from the common duty of care" under the Occupiers' Liability Act 1957 *ante* where the duty is owed to all visitors and the occupier must take reasonable care to see they are reasonably safe.

Sub-s (4): Reasonable in all the circumstances of the case, etc. The Law Commission suggested (in para 29 of their report (Law Com No 75; Cmnd 6428)) that regard would have to be had to certain circumstances common to all cases involving trespassers. Those circumstances would include the age and character of the trespasser, the nature and purpose of the trespassory entry upon the occupier's property (whether or not, for example in pursuance of a criminal purpose) and the question of costs necessary in taking precautions, although they pointed out that they did not regard the financial resources of the individual occupier as being

a matter which should be taken into consideration. For cases involving the common law duty of care see, generally, 34 Halsbury's Laws (4th edn) para 30.

Sub-s (6): Risks willingly accepted. Sub-s (6) of this section, which is similar to the Occupiers' Liability Act 1957, s 2(5) *ante*, preserves the rules, of common law concerning the application of the maxim *volenti non fit injuria*; see 34 Halsbury's Laws (4th edn) paras 62-65.

Sub-s (7): Highway. This expression is not defined for the purposes of this Act and it is thought that it has here the same meaning as it has at common law (as to which, see 21 Halsbury's Laws (4th edn) paras 1 *et seq*). Occupiers' Liability Act 1957, s 2. See this title *ante*.

2 (*Amends the Unfair Contract Terms Act 1977, s 1(3), Vol II, title Contract.*)

3 Application to Crown

Section 1 of this Act shall bind the Crown, but as regards the Crown's liability in tort shall not bind the Crown further than the Crown is made liable in tort by the Crown Proceedings Act 1947.

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Shall bind the Crown. See, generally, as to the application of statutes to the Crown, 8 Halsbury's Laws (4th edn) para 958. Crown Proceedings Act 1947. See Vol 13, title Crown Proceedings.

4 Short title, commencement and extent

(1) This Act may be cited as the Occupiers' Liability Act 1984.

(2) This Act shall come into force at the end of the period of two months beginning with the day on which it is passed.

(3) This Act extends to England and Wales only.

NOTES

Two months beginning with, etc. "Months" means calendar months; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. In calculating this period the day on which this Act was passed (ie received Royal Assent) is to be reckoned; see *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763; and *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899 at 909, [1967] 2 All ER 900, CA. This Act was passed on 13 March 1984, and accordingly came into force on 13 May 1984.

England; Wales. For meaning, see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.
