HENMANS LLP

Henmans Rural newsletter

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Obligations of cattle owners to members of the public

The Countryside Rights of Way Act 2000 has greatly extended the rights of the public to walk on mapped access land (including mountain, moor, heath and downs), in addition to public rights of way. This has increased the potential for the public to come into contact with cattle. It is therefore important that landowners who keep cattle on, or near to, areas of the countryside likely to be used by the public, comply with their legal obligations.

The Wildlife & Countryside Act 1981 states that bulls of a "recognised dairy breed" cannot be kept in a field which contains a public footpath. It defines these breeds as Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey, and Kerry. Bulls of other breeds are also banned from such fields, unless accompanied by cows or heifers. However, there have been calls from the Association of Personal Injury Lawyers for changes to the law to ban further a number of breeds which have become more common in the UK since the 1981 Act was first introduced some thirty years ago. One such breed is the Brown Swiss Bull, which was recently involved in the death of a walker in Nottinghamshire.

"businesses should take into account the frequency and type of use of their land by members of the public"

In addition, employers and the self-employed are also under an obligation under the Health and Safety at Work Act 1974 to ensure that, so far as is reasonably practicable, they do not put members of the public at risk through their work activities. One of the ways which potential dangers must be evaluated is by an employer making a risk assessment. For instance, businesses should take into account the frequency and type of use of their land by members of the public and whether dog walkers, for instance, may be anticipated.

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Other practical precautions that should be taken include:

- consideration of whether it is reasonably practicable to place fencing alongside a public right of way to separate cattle from the public
- provision of an alternative route that does not expose the public to any potential risk, although even if this is provided, the public can still choose to use the original right of way
- whenever possible, not to keep cattle in fields that are near to or include a public right of way, especially when cattle are calving
- ensuring that footpaths are clearly marked so that walkers do not become lost
- assessing whether calves kept with the herd will affect the behaviour of older cattle
- planning the location of handling and feeding areas to reduce the potential for cattle to block a particular right of way

Where dairy bulls or entire male cattle of a recognised breed are grazed, they must not be kept in a field containing a public right of way and should be securely enclosed. It is also sound practice to place a sign at any gate, stile or other access point to a field or open area alerting the public to any potential risk.

Hopefully these precautions will reduce the likelihood of any accidents taking place, but if you would like more information or to discuss any issue raised, please call Thomas Hallett on 01865 781000.

Thomas Hallett, trainee solicitor

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The horse box

The issue of trespassers occupying land – including grazing land – is one which worries many horse owners, often as a result of direct experience of groups of travellers entering onto and occupying land without permission, sometimes with their own horses. Livery yards, in particular, may find significant disruption to their business as a result. Aside from security concerns, the risk of disease being transmitted from horse to horse can naturally cause concern.

The law today usually treats trespass to land – and squatting in buildings - as a civil matter. Unless offences such as criminal damage, or public order offences are (or are likely to be) committed, the Police will usually inform a concerned landowner that they will not become directly involved.

That said, the Criminal Justice and Public Order Act 1994 created a criminal offence of aggravated trespass whereby the Police have the power, in serious cases, to direct trespassers to leave. An offence may also be committed if trespassers attempt to intimidate or obstruct lawful activities on neighbouring land. Those offences have historically been directed at protesters, including hunt saboteurs, and are infrequently used against trespassers who occupy rural/agricultural land, absent some form of intimidation or violence.

Anyone faced with trespassers has been obliged to use the County Court procedure to obtain a court order for possession, instructing court bailiffs to evict the trespassers if they do not leave in accordance with the order. Landowners do, in addition, have a common law right to evict trespassers using reasonable force, however exercising that right correctly is often fraught with difficulty, and can lead to further offences being committed.

The Ministry of Justice has this month published a consultation paper, examining whether squatting in buildings ought to become a criminal offence in itself. The potential withdrawal of legal aid for those accused of trespass is also under consideration. This follows a proposal by Justice Minister Christian Blunt. Contributions to the consultation are invited from those with experience of dealing with squatters, to the Ministry of Justice (www.justice.gov.uk).

Whether this signifies a hardening of the current administration's stance towards trespassers generally, and whether this may in time assist those who have had their land occupied without permission, is debatable. Further calls have been made to Government this week from Local Authorities faced with evicting travellers, to criminalise trespass generally. Civil rights groups have, however, expressed disquiet at the measures under consultation.

Esther Stirling, associate

In the meantime, anyone who finds their land being occupied without permission should seek advice from a solicitor as soon as possible. We have dealt with many evictions from agricultural land and residential property, and would be pleased to assist.

Esther Stirling is an associate in the dispute resolution team. For more information please contact Esther by email on esther.stirling@henmansllp.co.uk.

Compulsory registration of septic tanks

From 1 January 2012, all sewage discharges in England and Wales must be registered with the Environment Agency.

Sewage discharge systems include septic tanks or sewage treatment plants, otherwise known as 'package plants' which often discharge effluent directly into rivers or streams. If you operate such a system, you must register immediately.

Once an application has been received by the Environment Agency, it will assess the size of your sewage discharge system as well as the location of the discharge in order to ascertain whether an Exemption Certificate will be issued. A registration will be free where an Exemption Certificate is issued by the Environment Agency. However, if you discharge more than 5000 litres per day to surface water or more than 2000 litres per day to the ground an application for an Environmental Permit must be made. Such a permit will cost between £125-£885. An average 4 bed house will discharge around 1000 litres per day, so most sewage discharges will fall into the Exemption Certificate category.

If your sewage discharge is within 50 metres of a source of drinking water or if it is near an environmentally protected area, as may particularly be the case in rural surroundings, it is unlikely that an application for an Exemption Certificate will be accepted and the Environment Agency will require an Environmental Permit application to be submitted instead.

For further information and advice on whether and how to register your septic tank or whether to apply for a permit, please contact Sarah Barrell in our agricultural property team on 01865 781147.

The firm is not authorised under the Financial Services & Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of the Solicitors' Regulation Authority. We can provide these investment services if they are a part of the professional services we are engaged to provide. Professional advice should always be sought for assistance in specific areas of the law, and we cannot accept any responsibility for any action based on these articles.