



AN BILLE UM DHLITEANAS ÁITITHEOIRÍ, 1994
OCCUPIERS' LIABILITY BILL, 1994

EXPLANATORY AND FINANCIAL MEMORANDUM

General

1. The main object of the Bill is to simplify and clarify the law on occupiers' liability by giving it a firm statutory basis. At present, the law in this area is governed by common law principles. The Bill contains specific provisions which are designed to facilitate the use of land for recreational activities and implements many of the recommendations contained in the Law Reform Commission's Report on Occupiers' Liability (LRC 46-1994).

Main Features

2. (a) An occupier of premises will have a duty towards three classes of entrant — visitors, recreational users and trespassers. The duty owed to visitors will be to take reasonable care that they and their property do not suffer injury or damage by reason of any danger existing on the premises of the occupier ("the common duty of care") (*section 3*). The duty owed to the other two classes will be not to injure them intentionally or act with reckless disregard for them (*section 4*).

(b) In cases involving recreational users or trespassers who are minors, the basic duty will not differ in substance from that owed to adult entrants in equivalent circumstances but a court, in determining whether there is any liability, will have to have regard to specific factors such as the age of the minor and his or her ability to appreciate the relevant danger.

(c) Except in the case of recreational users and trespassers, occupiers will be able to modify their duty by agreement or notice and, in all cases, depending on the particular circumstances, a warning may be sufficient to absolve an occupier from liability (*section 4 (2) (g)* and *section 5*). Nothing in the Bill, however, affects the law relating to self-defence, the defence of others or the defence of property (*section 8 (a)*).

Financial Implications

3. The proposals in the Bill will not involve any charge on the Exchequer.

4. *Section 1* sets out various definitions. Among the most important are "danger", "occupier", "premises" and "visitor". Also of particular note are the definitions relating to "recreational

activity” and “recreational user”. “Recreational activity” is defined in very broad terms and will cover a wide range of open air activities such as camping, fishing and hiking. In addition, the definition includes visits to sites and buildings of historical, national or scientific importance. “Recreational user” has a number of key elements — such users must enter on premises for the purpose of engaging in a recreational activity, there must be no charge imposed for the activity and their status is unaffected by the fact that they might, or might not, have the permission of the occupier to be present on the premises to engage in the recreational activity. Excluded from the definition are members of the occupier’s family who are ordinarily resident with the occupier, persons invited by the occupier or such a family member and persons who, with the permission of the occupier or such a family member, enter on premises to engage in a recreational activity for reasons of a social nature connected with the occupier or family member.

5. *Section 2* provides that, in relation to dangers due to the state of the premises, the provisions of the Bill shall have effect in place of the common law rules which now govern such matters. These provisions will not apply to a cause of action which accrues before the commencement of the Bill. Nor will they apply to the special rules which affect particular types of relationship, such as that between an employer and an employee, for example (*section 8 (b) (iii)*).

6. *Section 3* states the duty which an occupier of premises will owe to visitors. That duty is to take such care as is reasonable to ensure that visitors and their property do not suffer injury or damage by reason of any danger existing on the premises.

7. *Section 4* states the duty which an occupier of premises will owe to recreational users and trespassers (*subsection (1)*). That duty is not to injure them intentionally or damage their property intentionally. It also involves not acting with reckless disregard for them or their property. The concept of reckless disregard is to be measured by reference to a number of criteria (*subsection (2)*):

- knowledge or reasonable belief by the occupier that there is a danger on the premises;
- knowledge or reasonable belief by the occupier that the recreational user or trespasser was or was likely to be on the premises and was or was likely to be in the vicinity of the danger;
- whether the danger was one against which the occupier should reasonably offer some protection and, having regard to the degree of danger, the burden on the occupier of eliminating the danger or providing protection against it;
- the character of the premises and, where the premises are likely to be used for recreational activities, the desirability of maintaining open access to facilitate such activities, and
- the nature of any warning given by the occupier or another person of the danger.

8. While the basic duty towards recreational users and trespassers who are minors is the same as that owed to their adult counterparts, there are three particular criteria in measuring reckless disregard which, in addition to those already outlined, will apply exclusively to them (*subsection (3)*). These criteria relate to the age of the minor, the ability of the minor to appreciate the danger and, where the minor is on the premises in the company of another person, the

extent of the supervision which that person might reasonably be expected to exercise. The latter two criteria will also be relevant where the recreational user or trespasser is a person with mental handicap (*subsection (4)*).

9. In the case of a structure provided primarily to facilitate recreational users, the occupier will be under a duty to take reasonable care to maintain the structure in a safe condition (*subsection (5)*).

10. *Section 5* sets out the provisions governing the ability of occupiers of premises to modify their duty towards entrants. Occupiers, by notice or agreement, may choose to take on a higher duty towards entrants than is necessitated by the Bill (*subsection (1)*). Occupiers will also be free to restrict the level of the duty which they would normally owe to visitors by agreement or notice, provided they act reasonably in so doing and, where a notice is involved, take reasonable steps to bring the notice to the attention of visitors (*subsection (2)*). Any such restriction, however, will not have the effect of allowing an occupier to reduce the duty owed to visitors below that owed to recreational users and trespassers. The latter is a basic duty from which no occupier can derogate (*subsection (3)*). Warnings which are enough to enable a visitor, by having regard to the warning, to avoid injury or damage may also absolve an occupier from liability (*subsection (5)*).

11. *Section 6* provides that an entrant who is not a party to a contract (a "stranger to the contract") cannot have his or her rights as an entrant taken away by that contract. So, for example, if an occupier contracts with an independent contractor to allow certain persons onto his or her premises for the purpose of carrying out some essential work, that contract cannot contain an agreement between the two that the duty which the occupier owes to those individuals is to be only that which is owed to trespassers. When the Bill comes into operation, this provision will affect both past and future contracts.

12. *Section 7* provides that an occupier who has taken all reasonable care when engaging an independent contractor will not be liable for injury or damage caused to an entrant by the contractor's negligence.

13. *Section 8* expressly preserves both common law and statutory provisions which impose responsibilities on particular classes of occupiers, for example hotel proprietors, which are greater than those imposed by this Bill. It also makes it clear that the provisions of the Bill are without prejudice to the general defences of self-defence, the defence of others and the defence of property.

14. *Section 9* makes it plain that the contributory negligence provisions of the Civil Liability Act, 1961 will apply so that entrants who contribute to their own injury by failing to take reasonable care for their own safety will be faced with a proportionate reduction in the damages, if any, to be awarded for that injury.

15. *Section 10* contains the short title of the Bill and provides that the commencement date for the Bill shall be one month after the date of its passing.

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Deireadh Fómhair, 1994.*

extent of the supervision which that person might reasonably be expected to exercise. The latter two criteria will also be relevant where the recreational user or trespasser is a person with mental handicaps (subsection (4)) and in situations where the occupier is a business or other person who has a duty to take special steps to ensure the safety of his premises.

10. In the case of a structure provided primarily to facilitate recreational users, the occupier will be under a duty to take reasonable steps to maintain the structure in a safe condition (subsection (2)).

11. Section 7 sets out the provisions governing the ability of occupiers of premises to modify their duty towards entrants. Occupiers by notice or agreement may choose to take on a higher duty towards entrants than is necessitated by the Bill (subsection (1)). Occupiers will also be free to restrict the level of the duty which they would normally owe to entrants by agreement or notice, provided they act reasonably in so doing and where a notice is involved, take reasonable steps to bring the notice to the attention of visitors (subsection (2)). Any such restriction, however, will not have the effect of allowing an occupier to reduce the duty owed to visitors below that owed to recreational users and trespassers. The latter standard applies to recreational users and trespassers (subsection (3)).

12. Section 8 expressly prescribes joint and several liability in cases where two or more occupiers are liable for injury or damage caused to an entrant by the contractor's negligence.

13. Section 9 makes it plain that the contributory negligence provisions of the Civil Liability Act, 1961 will apply so that entrants who contribute to their own injury by failing to take reasonable care for their own safety will be faced with a proportionate reduction in the damages if any to be awarded for that injury.

14. Section 10 contains the short title of the Bill and provides that the commencement date for the Bill shall be one month after the date of its passing.

15. Section 11 provides that the Bill shall be laid before each House of the Oireachtas and that the Bill shall not be passed unless it has been passed by both Houses of the Oireachtas.

16. Section 12 provides that the Bill shall be printed and bound in a single volume and that the Bill shall be printed in both the English and Irish languages.

17. Section 13 provides that the Bill shall be printed in both the English and Irish languages and that the Bill shall be printed in both the English and Irish languages.

18. Section 14 provides that the Bill shall be printed in both the English and Irish languages and that the Bill shall be printed in both the English and Irish languages.

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