



Advisory

The information in this advisory is a general summary and is intended to highlight some issues that developers will wish to review with their professional advisors regarding the risks attaching to their particular development. No responsibility for loss or damage or injury occasioned to any person acting, or, refraining from acting as a result of the information can be accepted by The Blueway Partnership.

OCCUPIER'S LIABILITY

The Occupiers' Liability Act, 1995 as amended by the Courts and Civil Law (Miscellaneous Provisions) Act 2023 (the "1995 Act") addresses the legal exposure of landowners and occupiers to claims arising from injuries to different types of users of a premises and the duty of care owed to those users.

Section 1 of the 1995 Act expressly confirms that a premises includes land, water and any fixed or moveable structures, and defines an occupier as *"a person exercising such control over the state of the premises that it is reasonable to impose upon that person a duty towards an entrant in respect of a particular danger"*.

The extent of the duty of care of each occupier towards users is dependent on the degree of control the occupier has over the premises, the particular dangers on the premises, and whether the user is classified as a (i) visitor, (ii) recreational user or (iii) trespasser.

In the case of the Blueways, local authorities will be the occupier/landowner in many cases along the water banks and entry points along the Blueway routes. In addition, users of the Blueways will almost certainly be classified as *"recreational users"*.

Where property of other landowners/occupiers is included in a Blueway the Developer will need to make appropriate arrangements with such landowner/occupier including indemnification under the Developer's insurance.

WHAT DUTY IS OWED TO RECREATIONAL USERS OF THE BLUEWAYS?

A recreational user for the purposes of the 1995 Act is someone who is on the premises (which includes on water), with or without the occupier's permission or at the occupier's implied invitation, without a charge being imposed for the purpose of engaging in a recreational activity, such as walking, sightseeing, kayaking etc.

The duty of care owed to a recreational user is lower than that owed to a visitor, but greater than that owed to a trespasser. In particular, section 4 of the 1995 Acts requires an occupier not to *"intentionally injure"* or act with *"reckless disregard"* for the recreational user. Although *"reckless disregard"* is not formally defined, the 1995 Act sets out a number of factors to be considered in determining whether an occupier would be considered as acting with reckless disregard in the particular circumstances.

Relevant factors are largely based on the state of knowledge of the occupier in relation to the dangers associated with the premises, and the protections the occupier should reasonably be expected to provide having regard to the difficulty, expense and impracticability of implementing those protections.

Other very relevant factors in the Blueways context include the character of the premises with regard to the recreational activity, and the desirability of maintaining a tradition of open access, as well as the warnings issued by the occupier and the care reasonably expected to be taken by the recreational user.

The duty owed by occupiers to recreational users is an area that has been litigated frequently, and it is clear that the courts do not impose onerous burdens on occupiers where recreational users are involved, in particular where the social utility of the recreational use is high and the risks to the users is clear.

The concept of *"voluntary assumption of risk"* has been introduced in respect of the duty owed by occupiers to recreational users. This provides that an occupier shall not owe any duty pursuant to section 4(4) to a recreational user in respect of **risks willingly accepted by the recreational user where the recreational user is capable of comprehending the nature and extent of those risks.** A court when determining whether a recreational user has willingly accepted a risk may consider the words or conduct of the recreational user without a requirement for evidence of communication or interaction with the occupier of the premises in question. In this regard occupiers should take appropriate steps to bring any known risks to the attention of recreational users through all appropriate mediums.

CONCLUSION

As both the social utility and the dangers inherent in recreational water-based activities are generally clear and obvious, recreational users will be reasonably expected to take particular care in that context. The duty of care imposed on occupiers in respect of recreational users in the context of the Blueways projects may therefore be perceived as not being overly onerous.

In addition, the extent of protections that an occupier can reasonably be expected to put in place on the Blueways are limited, given the scope and extent of the waterways involved.


However, of course, this will be subject to each managed facility/Blueway undertaking its own risk assessment and risk control exercise to ascertain individual preventative and protective measures.

All Blueways developers should obtain independent legal/ insurance advice in relation to their own developments. Furthermore, it is essential that appropriate warnings and water safety advices should be included and prominently featured in promotional materials, both printed and those available online and at each trailhead/entry way to the Blueways to minimise the risk of a legal challenge.

RECOMMENDED GENERAL WORDING FOR SIGNAGE

By entering the Blueway, users acknowledge the water safety risks associated with water activities and are responsible for their own safety. No responsibility is accepted and visitors use the facilities and water entirely at their own risk.

USERS SHOULD:

- 
- Check the weather forecast
 - Always look for and heed warning and guidance signs
 - Always wear a lifejacket or buoyancy aid
 - Stay parallel to the shore and avoid moving away from it where possible and/or appropriate
 - Avoid drifting into currents and entering fast flowing water
 - Understand that water levels can change and keep watch for underwater hazards
 - Always be aware of other users, particularly boats and other crafts
 - Wear appropriate clothing and footwear suitable for much lower temperatures and wind chill on the water and exit the water as soon as you feel cold
 - Never consume alcohol before or while in/on the water
 - Be accompanied by another experienced person when in/on the water
 - Plan your activity ahead of time, particularly with regard to the route, distance, and difficulty
 - Bring a copy of a map of the Blueway where appropriate
 - Inform someone where you're going and when you expect to return
 - Always exit the Blueway at a safe point
 - Take particular caution at weirs/flood gates
 - Follow the principles of Leave No Trace

EMERGENCY TELEPHONE NUMBERS

In the unlikely event of an Emergency use the following numbers:

Gardaí and Ambulance 999 (all phones) or 112 (all phones) and ask for the Coast Guard.

Note that mobile phone reception is unreliable in many areas so an alternative communication device such as a radio or a means of attracting attention such as a torch, flare or distress signal is recommended.

THE ABOVE IS NOT AN EXHAUSTIVE LIST OF RECOMMENDATIONS FOR SIGNAGE AND WARNINGS AND SHOULD BE ADDED TO, TAKING INTO ACCOUNT THE LOCATION AND PARTICULAR HAZARDS.



THE BLUEWAY PARTNERSHIP COMPRISES:

