

LEGISLATION

1. LIABILITY

a) Visitors

A visitor is defined as a person who is invited onto the premises by the occupier or permitted to be there. Relevant legislation is:

- **Occupiers Liability Act 1957** – This imposed a duty of care upon an occupier to ensure that a visitor would be reasonably safe in using the premises for the purpose for which they are invited or permitted to be there. This may be the fencing off of areas of mine workings or gating caves or adits on their land. The National Trust and the Forestry Commission are 2 examples of public bodies that have a remit for allowing and increasing access to their land but who must also ensure their land is safe.
- **Occupiers Liability Act 1984** – This amended the 1977 Act by stating that, where access to premises was granted for recreational and educational purposes only, it was not a business liability of the occupier unless allowing access to the premises was a part of the occupier's business. This may mean that a landowner who charges for access (e.g. Oxlow Mine, Derbyshire) may well be liable where as an owner who does not may not be.
- **Unfair Contract Terms Act 1977** – This amended the situation in respect of business premises only. It prevented an occupier of business premises from directly contracting out of his liability to a visitor in respect of death or injury caused by the occupier's negligence. However, it did allow him to make reasonable indemnity arrangements with a third party in respect of any visitor. The third party could, by a legally binding contract, totally assume any liability of the occupier including that resulting from negligence. Although an abandoned mine might not form part of a farmer's business, the law was not clear enough on this point.

b) Trespassers

A trespasser is defined as a person who comes onto the premises without the authority of the occupier and can vary from a person who innocently strays from a right of way to one who knowingly comes onto the premises with some criminal intent. Relevant legislation is:

- **Common Law** – This depended on two tenets, viz. "Volenti non fit injura" (if you voluntarily take a risk you cannot complain about an injury resulting from it) and "Ex turpi causa non oritur action" (no right of action stems from a wicked cause). Thus an occupier had no liability in respect of a trespasser unless the occupier had done some deliberate act with the intention of doing harm to the trespasser or had reckless disregard for the trespasser's presence.
- **British Railways Board v. Herrington 1972** – This was a case where a child was injured on a railway line after wandering through a broken fence. British Railways Board had been aware that the fence was in disrepair and were held liable. The House of Lords declared that an occupier had a liability towards a trespasser where there was a substantial probability of the latter's presence. The liability depended on whether a conscientious, humane man, with the knowledge, skill and resources of the occupier, could reasonably have been expected to have done, or refrained from doing, before the accident something which would have avoided it.

Information for those wishing to lead in underground environments.



- **Occupiers Liability Act 1984** – This stated that an occupier owed a duty to a trespasser when:
 - The occupier was aware of a potential danger
 - He had reasonable grounds to expect that a trespasser might come into the vicinity of the danger.
 - The risk was one against which the occupier might reasonably be able to offer protection.

The duty was to take reasonable care to see that the trespasser did not suffer injury on the premises due to the danger concerned. NO duty was owed:

- In respect of loss or damage to the trespasser's property.
- Where a trespasser had willingly accepted a risk
- Where an occupier had taken reasonable steps by warning of danger, discouraging people from taking risks or erecting a physical barrier.

It should be noted, however, that a sign on its own would not be regarded as sufficient in the case of a child trespasser, unless they were accompanied by an adult.

c) Assuming Liability

From the above, it will be seen that most landowners or mineral lessees can allow access to abandoned mines on their land as long as their business is not connected with the mine. You can absolve them of all liability (including negligence) by a verbal or written indemnity.

A problem arises, however, with defining a landowner "where allowing access to the premises is part of the occupier's business". This obviously applied to the owner of a show mine but the law has been interpreted as equally applying to others, eg. National Trust, Forestry Commission, etc. who allow the public onto their land for leisure purposes. This means that they cannot be absolved for negligence and this can make them wary about allowing access.

One way around this is for a third party to take on liability in a legal agreement. Thus an activity centre could do this in respect of parties of novices under their leadership. Some third party liability insurance policies allow the cover to be extended to landowners and this can be used to absolve them. Another way is for the centre to actually take out an exploration lease on the mine but this would then give rise to responsibilities under Health and Safety legislation.

2. HEALTH & SAFETY LEGISLATION

The HM Inspectorate of Mines & Quarries is a branch of the Health & Safety Executive. They have a responsibility to ensure that working mines are operated according to the:

- Mines & Quarries Act 1954
- Health & Safety at Work Act 1974
- Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 1985
- Management of Health and Safety at Work Regulations 1992
- Management of Administration of Safety and Health at Mines Regulations 1993
- Escape & Rescue from Mines Regulations 1995
- Adventure Activities Licensing Regulations 1996

It should never be assumed that this legislation ceases once a mine stops being worked to extract minerals. The HM Inspectorate have determined that once a mine has been excavated (as defined under Section 180 of the Mines & Quarries Act), it remains a mine regardless of the date of abandonment or subsequent use. They have also declared that any work carried out in an abandoned mine makes that a working mine under the legislation.

Information for those wishing to lead in underground environments.



Since party leaders from an activity centre or school are employed, they are working whilst taking parties into an abandoned mine and thus the regulations will apply. Sections 2-9 of the Health & Safety at Work Act apply to employers, self-employed and employees and Section 3 applies to members of the public.

The employing organisation has a responsibility both to its employees and members of the public (the novices) to ensure their safety whilst exploring an abandoned mine. They should notify the Mines Inspector of their intention to use a mine and the latter will visit the site to ensure that it is safe enough for the purpose. In addition the organisation must ensure that all leaders are competent to carry out their duties. If the organisation fails to do this, they are liable to prosecution. A code of practice has been agreed whereby these responsibilities can be satisfied if the leaders obtain an approved BCA leadership qualification but the organisations still have a responsibility to ensure the safety of parties.

Following the Lyme Bay tragedy, two additional factors have come into being to ensure additional safety:

- HM Mines Inspectorate insist that mine sites used by Centres are checked and approved by a suitably qualified person, eg. a mining engineer.
- The Adventure Activities Licensing Scheme operates a licensing system for providers offering activities to children under 18 where there is a possible danger. Cave and mine exploration is regarded as one of the dangerous activities. A licensing agency will be responsible for inspecting centres and issuing licences, which will only be issued if the centre satisfied minimum standards regarding equipment, qualifications of instructors, etc.

If an organisation takes out a lease to a mine site, it becomes the mine owner for the purposes of the legislation. This causes it to incur a great many more responsibilities, not only to its employees and novices but also to the general public at large. In such cases, it will have to liaise with the Mines Inspector to ensure that all legislation is complied with. Similarly, if an organisation carries out safety work in a mine to make it more suitable for parties of novices, this constitutes work and the circumstances should be reported to the Mines Inspector.