

Herding cattle along the public highway

Herding cattle along the public highway may be a regular part of your farming day or may only happen on an ad hoc basis. Whatever the reasons for driving cattle along the road, you need to be sure that you identify and manage risk in order to avoid potentially costly legal consequences.

What are the risks?

While herding cattle you should be aware that they can cause injury to both the farm workers herding the cattle and members of the public who are using the road. There is also the potential for harm to those who use the road after the cattle have been moved.

What is the legal position?

There are two main legal areas which may affect you if herding cattle is not managed correctly.

1 The civil law of negligence

If you do not have the cattle under sufficient control when they are on the road, this could amount to negligence. This means that you would be responsible for any damage or injury caused to other road users or their property. In practical terms, it could mean that you have to pay for the damage to a car to be repaired or to settle a personal injury claim if a passer by was injured.

To avoid liability, you must ensure that you use all reasonable care to prevent the animals from causing harm or damage. Whether you have acted reasonably will be judged by the standards of the ordinary man. The main way by which to demonstrate that you have acted reasonably is to show that you have identified the risks and taken steps to minimise these. The steps you will need to take will depend on the likelihood of harm and its potential severity, as well as the practicality and cost of taking precautions.

2 Criminal law

A criminal offence may be committed under the Highways Act as a result of the mud or dung deposited on the road by the cattle. It is also an offence to wilfully obstruct free passage along the highway. The obstruction may be caused by the cattle themselves or, if in large enough quantities, the mud / dung which they deposit on the road. If you were found guilty of such an offence, the punishment would be a fine, currently set at £1,000.

As a note of caution, you should also be aware that farmers have on occasions been charged with much more severe offences. Mills & Reeve have experience of representing clients who have been charged with the offence of causing danger to road users (an offence under the Road Traffic Act) and with manslaughter. Both situations arose where mud on the road was identified as a contributory factor in a road traffic accident and could have potentially resulted in imprisonment. Fortunately for our clients, Mills & Reeve successfully argued that, in the circumstances of each case, the charge was too severe and neither charge was upheld.

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There is also the risk that you may be prosecuted for breach of health and safety legislation. The overriding obligations are set out in the Health and Safety at Work Act. This provides that if you are an employer, you have a duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of your employees. In addition, employers and the self employed must also ensure that the conduct of their business does not expose others to risks to their health and safety. It is an offence to breach these obligations, whether or not a person is actually injured.

What can I do to minimise the risks?

The overall way in which to minimise the risks and the possibility of legal action is to regularly carry out risk assessments and to keep a record of them. A risk assessment should look at the whole process and identify potential dangers. It is not just a tick-box exercise and you should ensure that careful consideration is given to the risks in your particular circumstances. Where possible, you should then take steps to minimise those dangers. It is also advisable to keep a record of any incidents which do occur so that, where possible, you can take action to minimise these.

Aspects you may wish to consider are:

The route:

- Do you have to move cattle along the highway? Consider if there is an alternative route or one which minimises the distance over which the cattle have to travel.
- Do you have to close the whole road? Consider if it is practical to temporarily cordon-off one lane of the road to allow road users to pass along the road without coming into direct contact with the cattle.
- Use road signs to warn other users that cattle are on the road. If permanent signs are needed at regular crossing places, you should approach your local Council. One type of sign they may choose to provide is the flap folding sign which can be opened / closed as necessary.
- Once the cattle have left the road, ensure that signs are placed to warn motorists of any mud or dung which has been deposited on the road by the cattle. Take steps to ensure that the road is cleaned after use.

The animals:

- Know your cattle and identify those whose behaviour may sometimes be erratic. However, do not become complacent: an animal's disposition can sometimes change without warning. Remember that playful animals can be just as harmful as angry ones.
- Check animals before they are moved for signs of aggression and/or illness. Consider alternative ways of dealing with these animals so that their behaviour does not impact on the whole herd. If an animal is habitually aggressive or difficult to handle, consider whether you should cull it from the herd. If this is not appropriate, ensure that systems are put in place to manage this animal.
- Consider whether it is appropriate to move calves separately.
- Identify those animals which have not been handled frequently and these may pose an increased risk. When moving dairy cattle for the first time, allow the cows to become familiar with the noise and activity associated with milking.

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The people involved:

- Assess the number of people needed to manage the cattle and their roles in the process. At least one person should be at the front of the cattle to warn road users. You will also need people to open and close gates. Above all, you need to ensure you have enough people to keep the herd under control.
- Guidance from the Health and Safety Executive provides that those handling cattle should be:
 - able to use the handling and other safety equipment provided;
 - aware of the dangers when handling cattle and be supervised until they are competent;
 - able to work calmly with the cattle, with a minimum of shouting, impatience or unnecessary force; and
 - in good health and properly trained in safe work methods.
- The Guidance also suggests that children under 13 years old should not normally be allowed to handle cattle. In addition, as many incidents involving cattle occur to people when they are less agile, particular attention should be paid to the risks to those aged over 65.

Equipment:

- Have the appropriate equipment to assist you in directing the cattle, for example flatslap sticks.

Timing:

- Make sure that everything is in place for the movement of the cattle before the process begins.
- Ensure that you have enough time to carry out the process – rushing cattle may cause them to become agitated.
- Where possible, avoid moving cattle at busy times of day.
- If moving after dark, wear reflective clothing and carry lights – white at the front and red at the rear.

In addition to the points set out above, you may wish to consult the website for the Health and Safety Executive (www.hse.gov.uk). During 2010, the HSE is running a campaign to promote health and safety on farms and the materials on its website may be of use to you in relation to all aspects of your farming business.

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To further protect you and your business, you may wish to consider obtaining public liability and/or employers' liability insurance. You will need to provide your insurer with details of the activities you are carrying out. You should also ensure that you ascertain the cover that is being offered: for example, an insurance policy will not cover the cost of any criminal fine imposed on you.

Get in touch



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