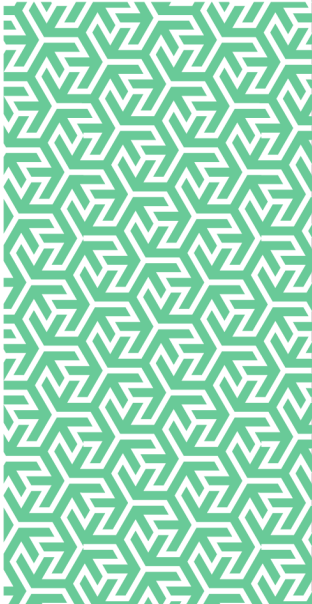


rmp

Inland Open Water Risk Management Guidance



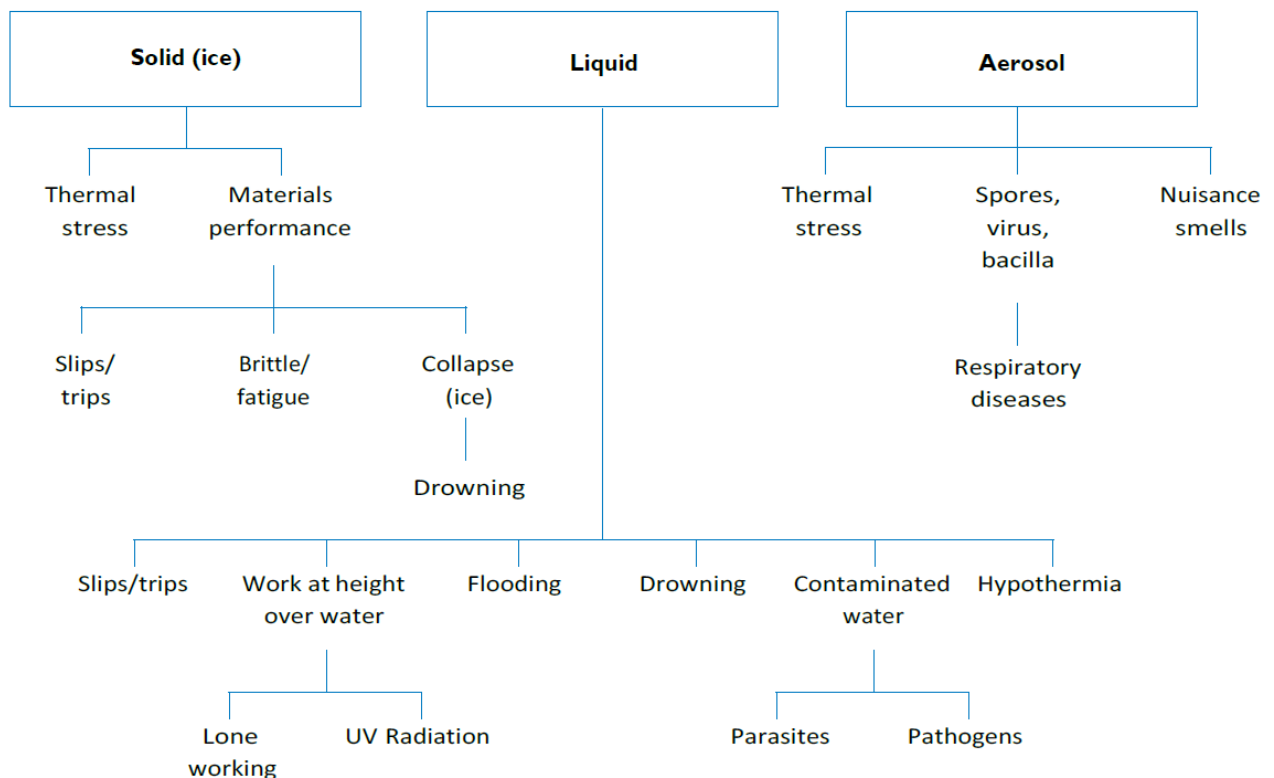
In partnership with



Inland Open Water Risk Management Guidance

Overview

This guide relates to lakes, ponds, reservoirs, flooded quarries and other stretches of open water. It does not cover open air swimming pools, or land and premises affected by the Harbours Act 1964. The numerical annotation made in this guide is for statute law, the alphabetical refers to case law. Both are found in the [References](#) section of this document. This guide considers the liability risks of local authorities with responsibility for the land on which the water feature exists. These are risks to the public, to children in particular, but also employees, contractors and service providers (paid or volunteer) working on or near the water. The guiding principle is that all open water is maintained 'so far as reasonably practicable' in a safe condition for the public, employees and contractors. Guidance on the designing-in of safety features can be found from organisations such as [RoSPA](#) and [RLSSUK](#) (see useful links further on in this document).



Who is at risk?

- **The public:** Using open water as a recreational resource, whether through invitation as an organised party or individually, or unauthorised such as trespassers. Children and young persons may not perceive the inherent risks of open water. They are at greater risk when tempted to play on ice formed on open water, as are adults when attempting to save them.
- **Authorised bodies:** This includes Governmental and Local Authority bodies, education establishments (schools but also outward bound facilities), utilities and construction operations, community activities (adult and children), safety inspections and Environment Agency operatives. Consider also those involved in emergency services rescue and crisis management (such as winter floods and household recovery). (1)

- **Contractors and utilities service providers:** May require access over water that is owned or managed by the local authority - railway, highways and utilities operatives may work over water as part of their normal activities. Specific controls apply (2). The application of pesticides and herbicides have their own regulations (3).

Controls

The general public

Risk controls should be a balance between allowing visitors to enjoy the open water environment, whilst maintaining defensible safety process and procedures.

- Risk assessment for high risk areas, and the likely actions of persons using the open water. RoSPA suggests breaking the assessment down into component parts.
- Precautions to discourage approaching deep water, such as the use of fencing or natural barriers as edge protection. Fencing and other hard control measures should be limited to areas where the hazards are less obvious, such as fast water ways, significant drops in height or change of direction.
- Natural vegetation edge protection is generally at least a 1 metre gap of dense and hostile growth, such as weed, scrub, nettle and brambles between the open water and a designated public pathway.
- Where members of the public regularly gain access such as visitor centres, rescue aids should be located at suitable points. The availability of life saving equipment can be jeopardised by vandalism. The decision to install rescue equipment will depend on the findings of the risk assessment, and the most appropriate devices for the circumstances should be carefully considered.
- Fishing platforms to direct anglers away from areas where they could slip into the water or come into contact with overhead power lines.
- Warning signs should be posted at locations such as entry pathways and high risk areas. Information signs will guide the public to the nearest lifesaving equipment. Repeater signs ('Danger Deep Water, No Swimming') displayed in key locations will remind the public of the hazards.
- When ice develops on principal sites of open water, temporary signs highlighting the hazard ('Danger – Thin Ice') should be displayed at access points (formal and informal) and at known sites popular to the public. More frequent staff patrols of the area should occur.
- It should be policy not to break the ice when it forms, for the following reasons—unnecessary or uncontrolled risks occurring in the act of breaking the ice; if the broken area re-freezes it is structurally weaker than other surrounding ice; opened free-water patches may encourage pets to enter the water and swim into difficulty, resulting in owners entering the water.
- Breaking ice for wildlife reasons may occur either at the request of an official wild-life body, or by well-meaning locals. In all cases, a risk assessment needs to be completed to consider the potential for loss of human life.
- Recording brief details of reported accidents and near –miss events, will allow risk assessment and management procedures to be reviewed and continuously improved.

Passive controls:

A local authority should consider providing web-site information on water safety. This may include information on drowning statistics, teacher lesson guides, and posters. Water safety leaflets, notices in local authority publications and premises such as libraries, and presentations in primary and secondary schools, are other options. The Royal Life Saving Society provides 'Ice Dangers' posters, and 'Winter safety tips' leaflets.

Those at work:

- Conduct a thorough risk assessment(4). The term 'water' can include sewage, sludges, treated effluents or any other liquid which can result in drowning or other injury – in these cases there is a heightened requirement for consideration of health and hygiene (5)(6).
- Develop safe systems of work to include control measures to prevent individuals, their equipment or any work materials from falling into water. Restoration works may have their unique risks (7), (8), (10), (11).
- Select the correct personal protective equipment for the environment, allow for seasonal variations, and research to identify hazards that may be unique to the inland water hazards. For example, personal flotation devices vary greatly in design and activation mechanism. (9)
- Train staff in dynamic risk assessment, self-rescue and group rescue situations.

Those providing an entertainments / outdoor event, voluntary activities (15):

When evaluating the competence of an events operator or voluntary body, ask the following:

- Can the operator provide evidence of competence?
- Can the operator provide examples of previous event plans and risk assessments?
- Is there evidence of formal training?
- Does the operator have insurance cover adequate for both public and employers liability exposures?

Risk assessments and method statements provided by suppliers and operators of inflatable structures should complement those undertaken by the owner or controller / organiser of the event involving the inflatable structure and not be considered in isolation as risks may be presented from within the greater context of: people; activities; equipment; and the environment.

First Aid and Contingencies

First aid: as part of your safety arrangements, you must have appropriate response procedures in place should someone be injured during the use of the inflatable structure, so think about how many first-aiders you will require, how you will contact the emergency services if required, and whether the emergency services have ease of access to the location. Consider these factors as part of your risk assessment and consult the First Aid at Work Regulations 1981 to see if you are subject to any statutory obligations.

Contingencies: above all else, the safety of people using the inflatable structure is of paramount importance. You need to have contingency plans in place, including the identification of circumstances in which you will remove the inflatable from use such as high winds, structural failure, equipment failure, accidents etc.

Monitoring

Critical monitoring activities include:

- Management of safe lone-working practices
- Management of group safety at open water sites
- Observance and compliance with safe systems and permits to work
- Practice and rehearsal, as part of emergency / business continuity / recovery exercises.
- Involve and practice with the rescue services, to develop appropriate first aid measures that preserve life until the emergency services arrive on site.
- Emergency response must reflect the remoteness of the site location, response times and the equipment and training provided.

Summary of legal responsibilities

There is a body of statute law relevant to local authority liability for open waters. The [References](#) further on in the document identifies key Acts and Regulations that apply.

Below is a (selective) list of civil law concepts that apply to this guidance, and attempts to summarise the extent of liability as defined by current civil and case law.

Local authorities have a responsibility to take reasonable care to avoid acts and omissions which could reasonably foreseeably injure a neighbour. Donoghue created the modern concept of negligence, by setting out general principles whereby one person would owe another person a duty of care (ref.a). Caparo sets out the 'three-fold test' in order for a duty of care to arise in negligence (ref.b).

No one can exclude or restrict their liability for the death or personal injury of another resulting from their negligence. Liability for negligence in other cases of loss or damage can be excluded or restricted only if it is reasonable so to do (12).

Where an occupier invites others onto his land, or has trespassers, he owes a minimum duty of care for personal safety (13), (14). Section 2(2) of the 1957 Act establishes a duty to '...see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there'; under s2 (3)(a) (ref.13) an occupier must be prepared for children to be less careful than adults.

The definition of reasonable is not fixed. In Rhind (ref.c) the defendant was not aware of a danger beneath the water surface. The claimant was unable to show that defendant had reasonable grounds to believe in existence of the danger, for the purposes of the Occupiers Liability Act 1984, s 1(3). It was not reasonable for the defendant to make underwater inspection of a lake.

The House of Lords (in Tomlinson) considered the balance of likelihood and seriousness of injury, against the social value of the activity which gives rise to the risk – and decided this was 'no reason for imposing a grey and dull safety regime on everyone'. (ref.d), (ref.e).

Bringing hazards to the notice of visitors comes within Section 1(5) of the 1984 Act (14). The occupier discharges his duty 'by taking such steps as are reasonable in all the circumstances of the case to give warning of the danger concerned or to discourage persons from incurring the risk'. The sign must be clear enough to ensure that the risk is obvious to the user or trespasser. Warning notices are often considered inadequate for children, who may be either unable to read or unable to appreciate the danger.

When deciding if warning signs are necessary, relevance should be considered. In *Bourne Leisure* (at the Court of Appeal) it was established that the issuing of a site plan to visitors, had discharged the appellant's duty to visitors under section 2 of the Occupiers' Liability Act 1957 (ref.f). Sources of danger to unaccompanied children on-site, in particular lakes and ponds, were shown on the site plan. Parents had been made aware of the need to accompany their young children and of the dangers at the water's edge. Any warning signs were irrelevant in this case.

The question of *volenti non fit injuria* (acceptance of risk) has to be considered at the same time as the question of the existence of the duty of care. If the trespasser willingly accepts the risk as his, there is, under section 1(6) of the 1984 Act, no duty owed by the occupier (14). In *Ratcliffe* the plaintiff had been aware of the risk and had willingly accepted it. A pool with a 7 foot high fence, a locked gate and a prohibition on use of the pool in the stated hours, is deemed as offering a reasonable level of protection. Accordingly, the defendants had been under no duty to the person who suffered the injury (ref.g).

References

Legislation

- 1 [Health and Safety at Work Act 1974](#) – s 2,3,4,7,8
- 2 [Work at Height Regulations 2005](#) – Regulation 4 3 [Control of Pesticides Regulations 1997 / EU](#)
- 3 [Control of Pesticides Regulations](#)
- 4 [Management of Health and Safety at Work Regulations 1999](#) – Regulations 3,4,5
- 5 [Workplace \(Health Safety Welfare\) Regulations 1992](#) – Regulations 21-15
- 6 [COSHH regulations 2002](#) – Regulations 6 and 7
- 7 [Confined Space Regulations 1997](#) – Regulation 5
- 8 [Construction Design and Management Regulations 2015](#)
- 9 [Personal Protective Equipment at Work Regulations 1992](#) – Regulation 6
- 10 [Environmental Protection Act 1990](#) – Part II para 33, 35; Part III para 79 – see also [Pollution Prevention Guidelines Works and maintenance in or near water](#) – PPG5
- 11 [Environment Act 1995](#) – part IIA para 78 12 [Occupiers Liability Act 1957](#) – sect 2(5)
- 12 [Occupiers Liability Act 1984](#) – s 1 (Duty of care)
- 13 [HSE publication safety in outdoor events](#)

Case law

- 14 *Donoghue vs Stevenson* (1932) AC562 (duty of care)
- 15 *Caparo Industries plc v Dickman* (1990) 2 AC 605 (three stage test)
- 16 *Rhind v Astbury Water Park* (2004)
- 17 All ER (D)129 (reasonable to undertake action)
- 18 *Tomlinson v Congleton Borough Council* (2003) 3 WLR 705 (knowledge of risk)
- 19 *Donoghue v Folkestone Properties Ltd* (2003) (3 All ER 1101; 2 WLR 1138 (reasonable expectation)
- 20 *Bourne Leisure Ltd v Marsden* (2009) EWCA Civ 671 (whole area dangerous to children)
- 21 *Ratcliffe v McConnell* (1999) (Acceptance of risks / volenti).

Useful links

- Morrell, J and Foster, R (His Honour): Local Authority Liability 5th edition. Bristol. Jordan Publishing Ltd.
- Safety at inland water sites – operational guidelines. RoSPA1999 ISBN 185088 092 1.
- Clerk & Lindsell On Torts 20th edition 2010.
- Royal Life Saving Society UK: <https://www.rlss.org.uk/>
- Royal Life Saving Society UK, National Water Safety Management Programme:
<https://www.rlss.org.uk/pages/category/national-water-safety-management-programme>
- Health & Safety Executive: Reservoirs and HSW act: Inspection policy:
http://www.hse.gov.uk/foi/internalops/ocs/800-899/847_10.htm

Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

contact@mpartners.co.uk



Risk Management Partners

The Walbrook Building
25 Walbrook
London EC4N 8AW

020 7204 1800
rmpartners.co.uk

This newsletter does not purport to be comprehensive or to give legal advice. While every effort has been made to ensure accuracy, Risk Management Partners cannot be held liable for any errors, omissions or inaccuracies contained within the document. Readers should not act upon (or refrain from acting upon) information in this document without first taking further specialist or professional advice.

Risk Management Partners Limited is authorised and regulated by the Financial Conduct Authority. Registered office: The Walbrook Building, 25 Walbrook, London EC4N 8AW. Registered in England and Wales. Company no. 2989025.