

An **A-Z** of
Rural Disputes



The letter of the law

Shepherd and Wedderburn's Rural Disputes team is made up of sector specialists, with a deep connection to the rural world and years of practical experience in resolving the many different disputes that can arise within it.

We have the specific legal expertise that our clients require from us, of course, and just as importantly we understand the unique aspects of rural life and business that can only be appreciated through first-hand experience.

To demonstrate that, we've created this A-Z of Rural Disputes. It shares some of our knowledge and insight, along with a few thoughts that you might find useful; we hope that you'll find it instructive, thought-provoking and even entertaining.

Disputes can arise for many reasons, and can be resolved in many ways. Getting expert legal advice and insight at an early stage can significantly increase your chances of achieving the right result as quickly and painlessly as possible. And if you end up in court, the right litigation strategy and representation can make all the difference.

As always, we should be clear that none of what follows is legal advice. But if you'd like to have a more detailed and specific discussion about anything here, don't hesitate to get in touch.

The Shepherd and Wedderburn Rural Disputes team

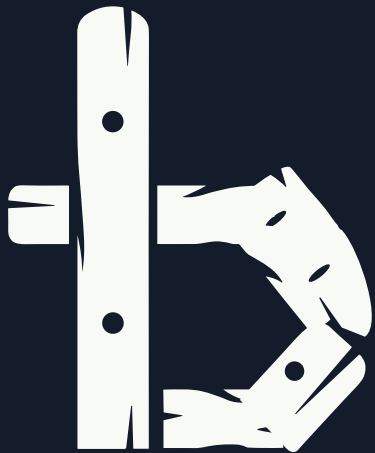
A is for Access

Some rural land is only accessible by crossing someone else's property. Access rights take various forms – some are granted to the public at large, others to neighbouring proprietors by virtue of their titles or operation of law – and they can provide fertile ground for disputes. Whether the issue is obstruction of access rights, the manner in which those rights are exercised, someone attempting to vary the access route, apportioning liability for maintaining the route, or anything else, the road to a resolution is not always clear.



A is for Agritourism

Glamping, weddings, festivals, children's outdoor experiences... there are many different ways to bring new visitors onto your land, and so to diversify your business and generate new income streams. Any agritourism initiative needs to be planned carefully, though. Do your title deeds contain any restrictions on how you can use the land? Will extra health and safety measures be required? With the right preparation, you can create memories that last a lifetime. Without it, the potential for disputes.



B is for Boundaries

Well-defined land boundaries make life easier for everyone. But many of Scotland's land deeds are based on historic and poorly drawn plans, which often refer to physical features that have since changed or disappeared. The physical boundary is not always the same as the legal one – and sometimes this is not discovered until a diversification or development project, or a change in ownership, is underway.

B is for Bulls

Any arrangement for breeding bulls to be shared, hired or grazed should be formally documented, because disputes can arise over responsibility for injury or loss, costs, land rights, and (when a bull has served multiple herds) parentage. Awkward.



C is for Clubroot

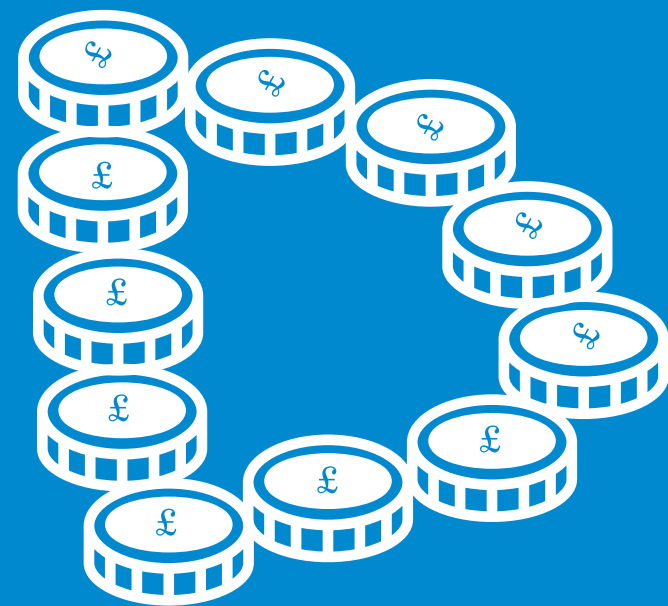
Because clubroot (a disease that affects the root development of certain plants) is carried in soil, people can unknowingly spread it from one field to another if proper bio-security measures are not in place. Landowners would be wise to check any agreements with any third parties who might access their land. If clubroot is spread by a third party failing to wash soil and crop debris from machinery, for example, a damages claim may follow.



C is for Crofting

More than 750,000 hectares of Scotland's rural land is held in a unique legal framework: crofting. This has many cultural, environmental and economic benefits. But crofters' legal duties can come into conflict with, for example, development or diversification projects. And difficulties can also arise around succession, use of common grazings, maintenance obligations, access, and other aspects of rural life and business.

No wonder that a croft is often described as 'a piece of land surrounded by a sea of legislation'.



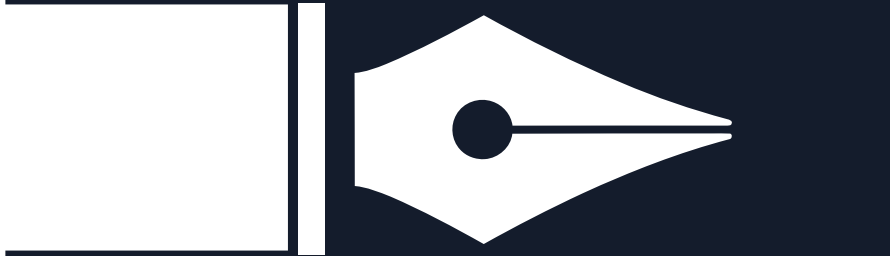
D is for Debt

In certain circumstances where someone owes a debt, their livestock, machinery, or other assets can be 'attached'. In effect, this means that they are legally seized, and then sold at auction to settle the debt. We once helped a client attach over 1,000 sheep.

D is for Drainage

A rainy country needs to be a drainy country, but in fact severe storms – or even just a change in how a piece of land is used – can cause all sorts of problems. Flooding often leads to disputes, of course, and the flow of surface water, rights to drain water across neighbouring property, and maintenance obligations can also make waves.





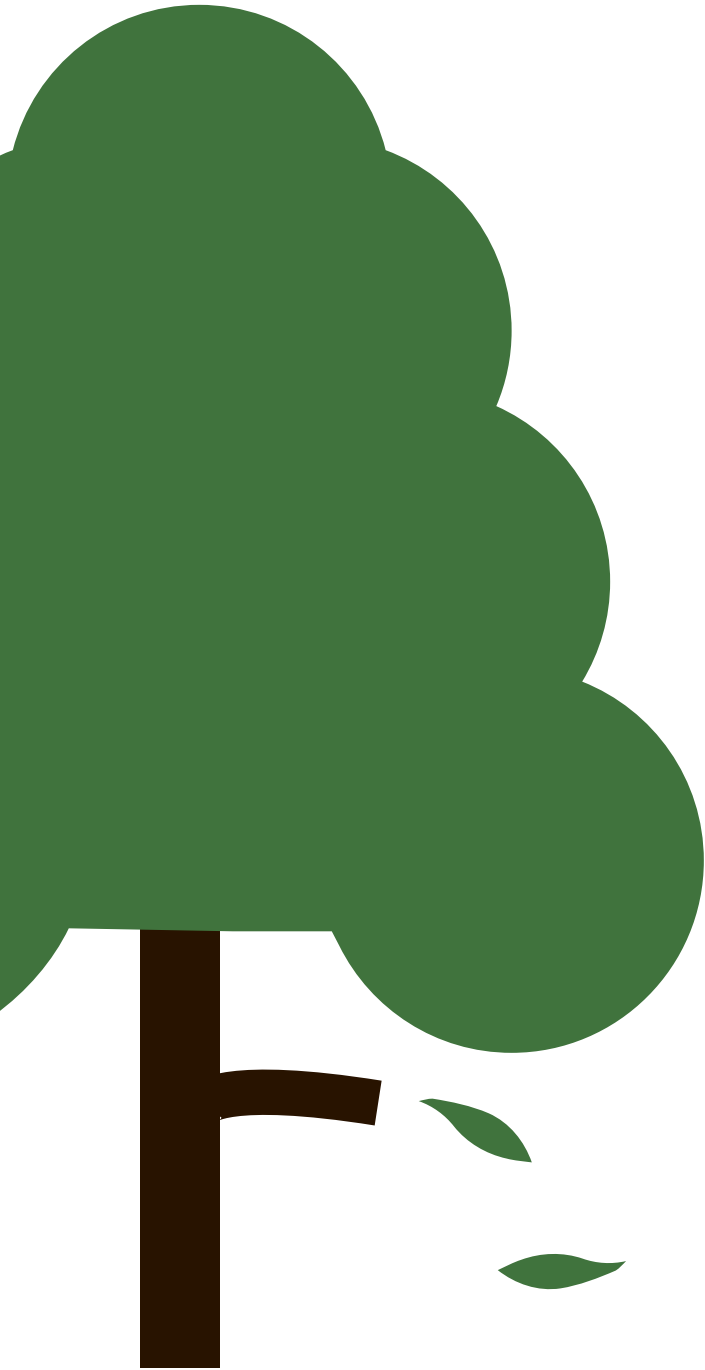
E is for Executry

What happens after death? In a spiritual sense, we don't know, but in a legal one we certainly do. All too often the answer is: a lot of complex legal work, and sometimes disputes over the deceased person's will. Those disputes can be even more complex and difficult to manage when the deceased owned a business, or was a partner in a partnership, something that is particularly common for those living and working in the rural sector.



E is for Energy

Renewable energy projects are an increasingly popular way to diversify the use of land, but the legal issues should be considered first. Do the title deeds permit this? Can you get a connection to the grid? What land rights do you want to hold on to? And if the land is a croft, this can add further legal complications. Thinking through all the necessary questions will help to ensure that your project generates profit, not problems.



F is for Forestry

Trees are a beautiful part of Scotland's natural environment, a long-term investment that brings economic and environmental benefits to many rural communities, and, if you are a sheep, a delicious and nutritious meal. We have seen disputes arise as a result of such ovine gastronomy.

F is for Farming Partnerships

Farming partnerships are often built on trust – family relationships, for example, and longstanding working arrangements built on no more than a handshake. So disputes can be particularly painful. Many of them can be avoided by putting in place a clear, detailed and up-to-date partnership agreement.





G is for Gates

Gates and locks are essential aspects of everyday life. But they can also give rise to legal disputes about (A is for) access, if people disagree about who (and what) is entitled to pass through, and whether a gate should be kept locked. These disputes can be difficult, because there are different types of access – for example private servitude rights, public rights of way, and 'right to roam'. Each of them has very different legal implications when attempting to unlock a solution.

G is for Green Burials

In Scotland, more and more people are looking at environmentally friendly end-of-life arrangements. Sites in woodlands and meadows are often used, whether managed privately or by a local authority. However, concerns about contaminating water or soil, use restrictions, access rights and future development plans can all lead to disagreements.

H is for High Hedges

If a neighbouring hedge is causing a problem because of its height rather than due to overhanging branches, the High Hedges (Scotland) Act 2013 may provide a route for adjudication. It precisely defines a 'high hedge', and sets out a process for application, decision and appeal. Try to resolve the matter through amicable discussion first, though, and definitely don't just grab a ladder and a chainsaw.

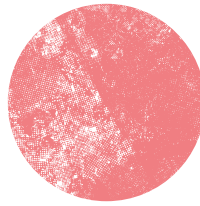


H is for Health and Safety

In many agricultural and rural settings, health and safety risks come with the territory – whether connected to machines, livestock or people. In particular, if your business employs people, or involves members of the public coming onto your land, you need to understand your duties because failing to take the necessary steps to protect people can have very serious consequences – for everyone.

I is for Immigration

Many rural businesses need a lot of seasonal labour – more than the local population can supply – so employing overseas workers is common. Employers have various legal obligations in this area, including checking that people have the right to work in the UK. I is definitely not for Illegal Workers. We can help to ensure compliance with the rules, and, for employers that have received civil penalties, advise on how to challenge them.



APPROVED

J is for Justiciaries

Scotland has various forums for dispute resolution. Many are courts, such as the Scottish Land Court (which has authority to resolve a range of agriculture and crofting disputes, including those between landlords and tenants), the Sheriff Courts, the Court of Session and, at the top of the tree, the Supreme Court. The Lands Tribunal for Scotland is not a court, but has statutory power to deal with various types of dispute involving land or property. And then there is the First Tier Tribunal, which deals with disputes in the private rented housing sector. Many landowners are also landlords, and we have dealt with numerous disputes relating to evictions on their behalf.





K is for King's and Lord Treasurer's Remembrancer

What happens when someone dies with no heirs, or a company that owns land is dissolved? The King's and Lord Treasurer's Remembrancer (commonly referred to as the 'KLTR') will probably be key to the solution. This body is a representative of the Crown in Scotland, which is granted certain powers to deal with property which falls to the Crown by operation of the law. This includes land and assets of dissolved companies, the estates of individuals who die leaving no heirs, and treasure found in Scotland. We advise on various matters in this area, particularly "bona vacantia" and prescriptive claimants applications.



L is for Licensing

Don't let alcohol licensing requirements catch you out while expanding your rural business. Opening a gin distillery or a farm shop/café selling alcohol? A Premises Licence under the Licensing (Scotland) Act 2005 may be required. If the premises are still under conversion or construction, it is possible to apply for a Provisional Premises Licence, but expert advice is essential to ensure you don't fall foul of the legislation.

L is for Leases

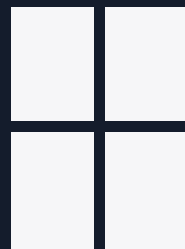
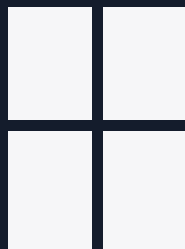
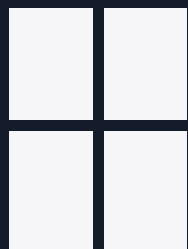
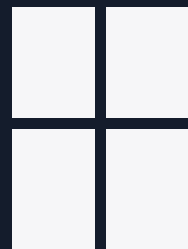
In the year 1449, the final Byzantine Emperor was crowned, King James II married Mary of Guelders at Holyrood Abbey, the arts patron Lorenzo de' Medici was born in Florence, the Mongol Empire defeated the Ming Dynasty in the Battle of Tomu Fortress, and the Leases Act became law in Scotland. Today, only one of them is still going strong.

Although the Act is one of the oldest Scottish statutes still in operation, it still has relevance to rural properties today. It protects certain tenants by ensuring that their leases remain enforceable even if the land is sold or transferred to a new owner. Such leases are said to confer a "real right" on the tenant.



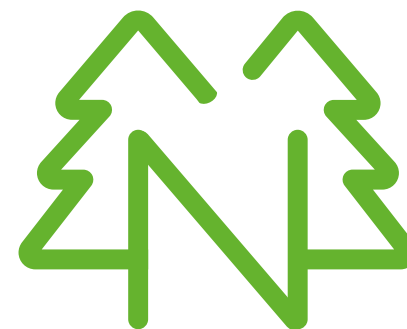
M is for Mediation

Litigation is not the only way to resolve a dispute: mediation may be a better option for all concerned. To get the best out of the process you need to fully understand how it works and what can be achieved, to approach it with the right mindset, and to be very clear about your priorities. We have helped many people to do all of those things – and so to resolve their disputes with a smaller investment of time and resource.



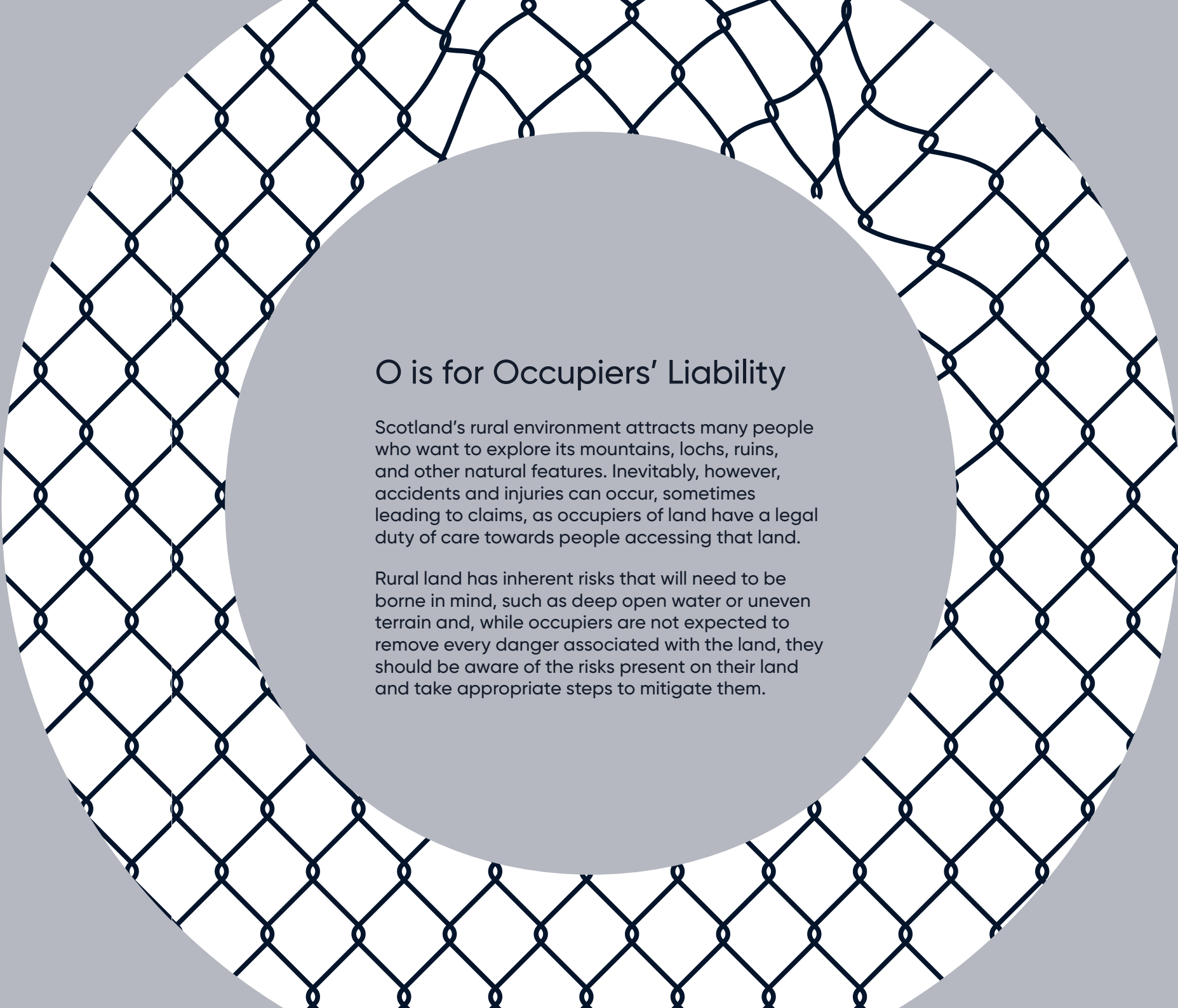
N is for Neighbours

Many aspects of rural living can create tension between neighbours, including shared access tracks, trees, livestock, rivers, and confusion over boundaries. Noise, water and smells can even lead to claims for damages under the law of nuisance – but the bar is rather high. Expert guidance at an early stage is the best way to avoid legal action... and that's when good neighbours become good friends.



N is for Natural Capital

The term 'natural capital' describes any land asset that rural landowners can use to generate income or diversify their businesses. Many such projects have an environmental goal: tree-planting, peatland restoration and rewilding, for example. There are many commercial opportunities, but as this is a developing market it also carries some risks and potential for disputes, so you should start by ensuring that you are well-informed.



O is for Occupiers' Liability

Scotland's rural environment attracts many people who want to explore its mountains, lochs, ruins, and other natural features. Inevitably, however, accidents and injuries can occur, sometimes leading to claims, as occupiers of land have a legal duty of care towards people accessing that land.

Rural land has inherent risks that will need to be borne in mind, such as deep open water or uneven terrain and, while occupiers are not expected to remove every danger associated with the land, they should be aware of the risks present on their land and take appropriate steps to mitigate them.



P is for Private Water Supply

Private water supply disputes commonly arise in rural areas – often after forestry, building or infrastructure works have affected the water's quality or quantity. Claims for damages and compensation can result in a new supply needing to be installed, whether that is via the mains, a borehole, or another private water supply arrangement.



Q is for Quarrying

In Scotland, owning a piece of land does not automatically mean that you own any minerals below it. This can create challenges for people who want to develop rural land. And because there is no clear physical boundary between subsoil and minerals, it can be hard to tell where lawful development ends and trespass begins.



R is for Riparian Rights

Climate change is transforming our weather in many ways, and we ought not to take our water resource for granted. Private water rights are a factor in ensuring a sustainable future for Scotland's water. The phrase "riparian rights" is often used to refer to the rights of common interest held by landowners who own the bed of a natural watercourse such as a river or stream. These rights of common interest are a complex and, at times, confusing area of law that is becoming increasingly important for developers and landowners alike.

R is for Right to Roam

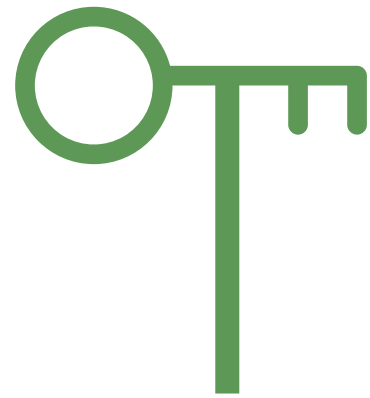
The right of responsible access (also known as the "right to roam") allows members of the public to access most land and inland water in Scotland for recreational and other purposes. But they also have responsibilities, as do landowners. Since the Land Reform (Scotland) Act 2003 was introduced, how those responsibilities should be interpreted has led to several high-profile disputes.





S is for Servitudes

Some of the most difficult rural disputes arise in relation to rights over someone else's land. A servitude is a "real right" which allows a property to use a neighbouring one owned by someone else for a specific purpose, such as access, drainage or to lay pipes. They can be created in various ways, including expressly in a deed, by implication or purely by long-term use ("prescription"). As such, and because many servitudes have existed for decades, disputes can arise over whether a servitude exists at all, its location or route, and in relation to the rights and obligations of the parties.



T is for Tenancies

Several types of tenancies are used in Scotland's rural sector for different purposes. One of these is agricultural tenancies. Because these often provide the tenant with their livelihood as well as their home, they are tightly regulated. Disputes which arise out of agricultural tenancies are heard in the Scottish Land Court.

A wide variety of residential tenancies also exist, and disputes relating to these are usually heard in the First-Tier Tribunal. We have helped many landowners to successfully navigate this legal landscape, for example in disputes around evictions.



T is for Trees

Philosophers ask: "If a tree falls in the woods and no one is around to hear it, does it make a sound?" Scottish landowners are likely to add: "And if it causes damage, who is legally responsible?" The first question lies outside our area of expertise, but we can help you with the second one.



U is for Unlawful Occupiers

Some unlawful occupiers are people who have overstayed the terms of their lease, but a far greater number never had any lawful right to be on that land at all. Landowners have a choice of ways to address the situation. Picking the right one – and above all doing so swiftly – can make a big difference to the outcome.

The law in this area is related to – but distinct from – the law of trespass. Contrary to popular misconception, this does exist in Scots law, and gives landowners the right to exclusive possession of their property. People may not enter or remain on it without permission, and the same goes for animals and even inanimate objects.

More recently, the law of trespass has had to co-exist with the (R is for) right to roam.



V is for Vermin

Many animals can be seen as vermin under Scots law, including deer and some birds. Landowners can legally take certain steps to protect their property from vermin, but these rights also come with obligations. It is a closely regulated area, and penalties for breaches can be severe.

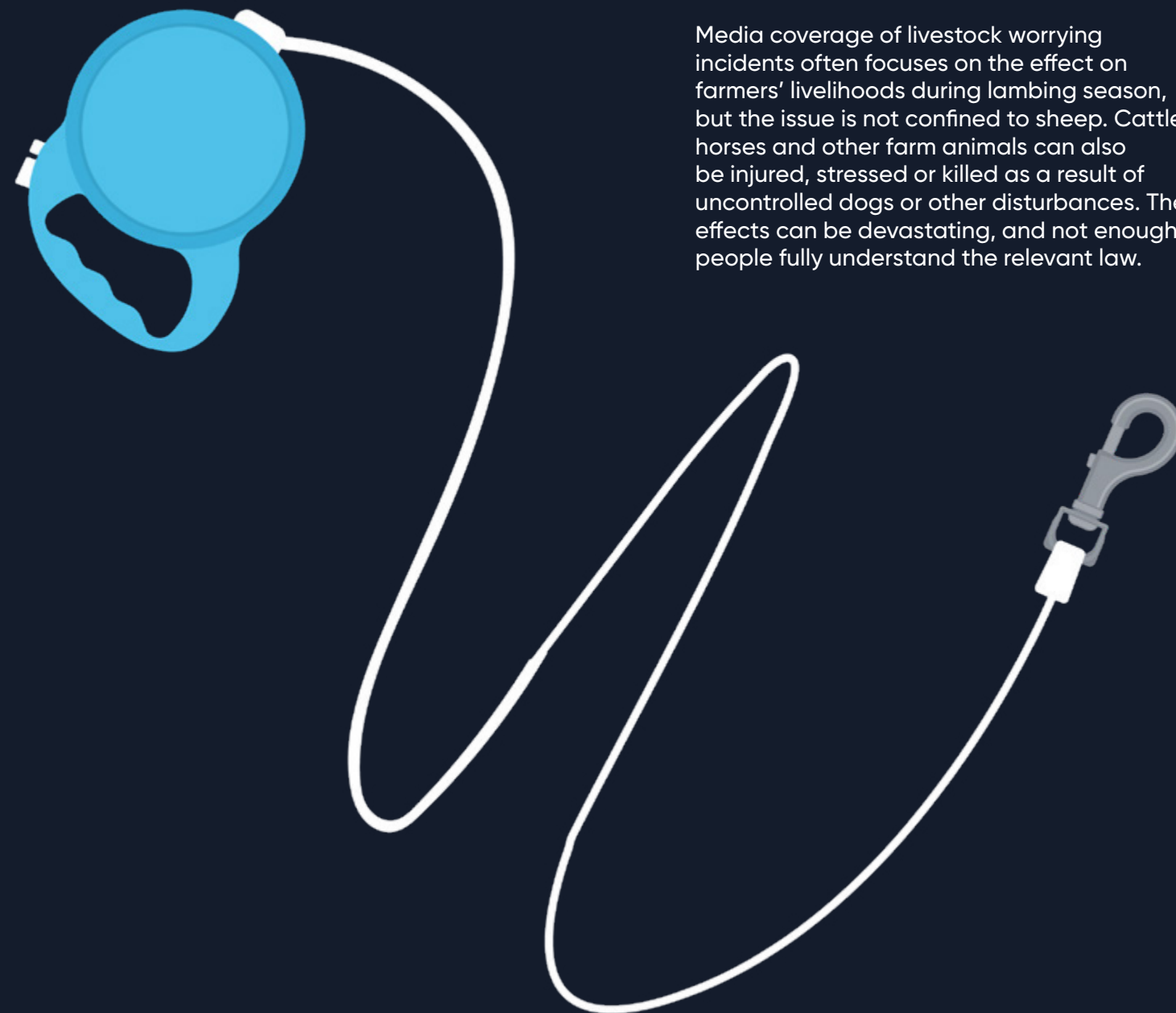


W is for Warranty Claims

In simple terms, warranties are legally binding promises concerning something that is being sold. They might apply to previous events, such as a property's history of flooding; an action that has been taken, such as securing planning or building consents; or the quality of something, such as a water supply. If it later emerges that a warranty is untrue, then the purchaser may be able to make a claim for damages against the seller.

W is for Worrying

Media coverage of livestock worrying incidents often focuses on the effect on farmers' livelihoods during lambing season, but the issue is not confined to sheep. Cattle, horses and other farm animals can also be injured, stressed or killed as a result of uncontrolled dogs or other disturbances. The effects can be devastating, and not enough people fully understand the relevant law.



X is for eXit

Whatever it is you're exiting – a tenancy, a partnership, a business – this will be a rare event, and possibly once-in-a-lifetime. So it's very important to ensure that you handle it correctly, maximising the benefits and minimising the risk of a problem emerging later.

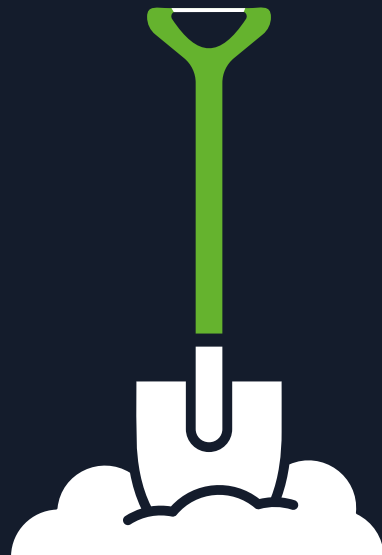
Y is for Yield

Projected yields will be a key part of the business case for projects or deals involving forestry, crop growing, natural capital and renewable energy. If the anticipated returns fail to materialise, this can lead to disagreements. What was the cause of this? Were all the assumptions disclosed? Has something or someone affected productivity? Were the projections and forecasting realistic? Has someone failed to fulfil their contractual obligations? Good agreements cannot guarantee a successful harvest, but they can help to prevent a disappointing yield becoming a costly dispute.



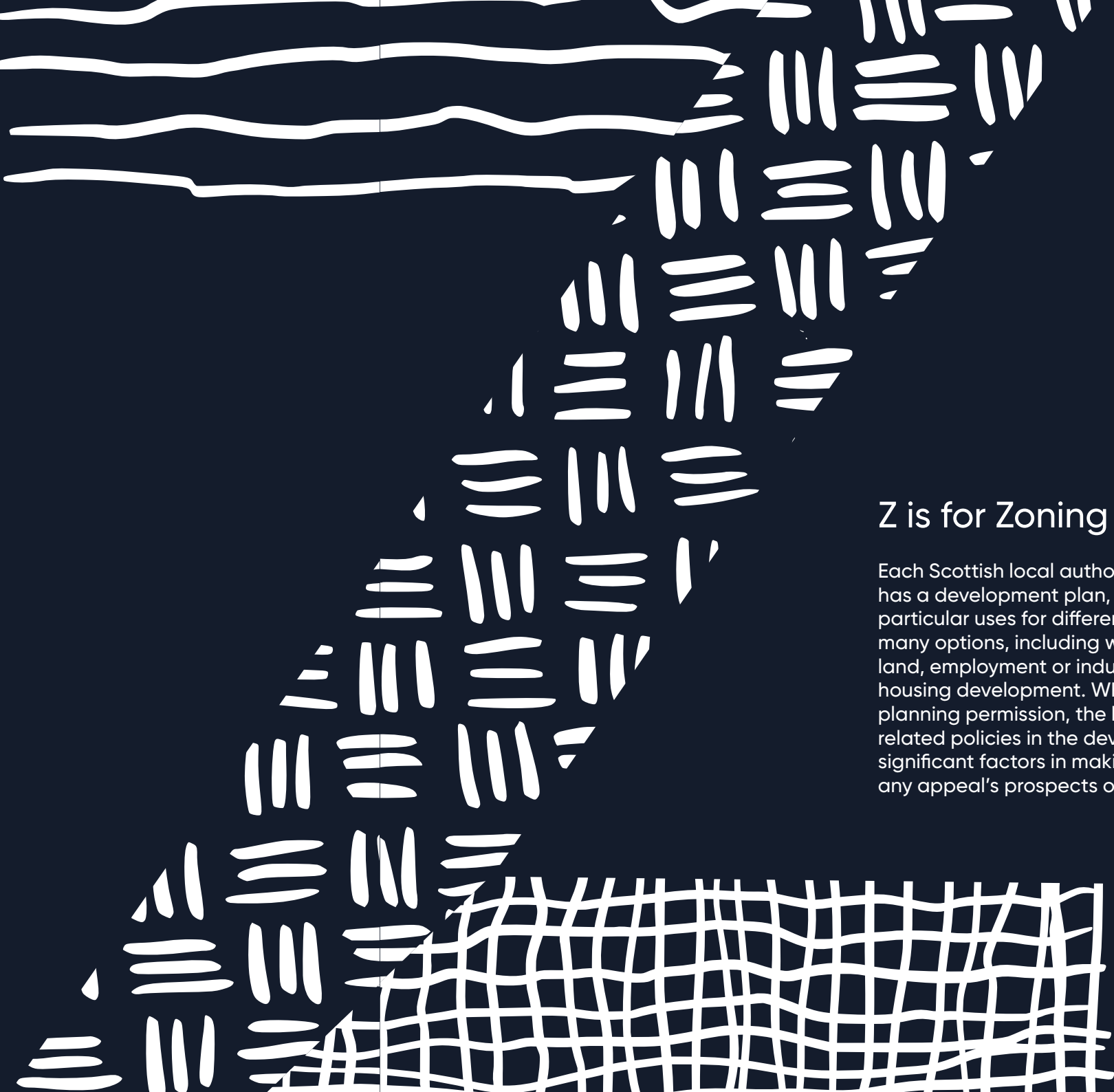
Y is for Young Farmers

Many rural businesses are family-owned and managed, so – like it or not – succession planning is something that must be addressed. Who is the best person to take over? Will they need outside help? Will other family members be compensated in some way? And, of course, there are tax considerations. We can advise on the legal and tax planning aspects, but often the first step is for everyone in the family to have some open and honest conversations in which everyone gets a chance to share their views and, just as importantly, listen to other people's. Much better to have a discussion now, even if it's a difficult one, than a dispute later – and we have seen many disputes arise because of assumptions about succession that were never properly discussed.



Z is for Zoning

Each Scottish local authority and national park area has a development plan, and accordingly identifies particular uses for different pieces of land. There are many options, including wild land, prime agricultural land, employment or industrial land, and land for housing development. When someone applies for planning permission, the land allocation and the related policies in the development plan will be very significant factors in making the decision – and in any appeal's prospects of success.





The last word

We hope that you've enjoyed this small selection of our work in the Rural Disputes team. You can see that the rural world can be the setting for a huge variety of disputes, arising for many different reasons. Resolving them requires legal expertise, of course, and also a genuine understanding of the day-to-day realities of life for those who live, work or operate in the rural sector.

The roads to resolution are equally varied, and it's important to keep an open mind about this. Sometimes litigation is unavoidable, however – and when that happens, having the right strategy and representation is invaluable.

Seeking expert advice as early as possible tends to put you in a stronger position. It helps you to fully consider all your options, gather and preserve all the evidence you'll need, and decide on a dispute resolution strategy that will guide your decision-making throughout the process.

If you're involved in a disagreement or dispute – whether it's about access, zoning, or anything in between – don't hesitate to get in touch. We'd be happy to explore the issues in more detail.

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