



WATER VOLES AND DEVELOPMENT

Water voles are now fully protected under the Wildlife and Countryside Act 1981 (as amended). This protection has implications for developers and planners who wish to carry out work where water voles are present.

Legislation

Under the Wildlife and Countryside Act 1981(as amended) (W&CA) it is illegal to:

- intentionally kill, injure or take any wild water vole. 9(1)
- possess or control any live or dead wild water vole or any part of, or anything derived from, such an animal. 9(2)
- intentionally or recklessly damage or destroy, any structure or place which any wild water vole uses for shelter or protection. 9(4)(a); or
- intentionally or recklessly disturb any such animal while it is occupying a structure or place which it uses for that purpose. 9(4)(b); or
- intentionally or recklessly obstruct access to any structure or place which any wild water vole uses for shelter or protection. 9(4)(c)
- sell, offer or expose for sale, or have in possession or transports for the purpose of sale, any live or dead wild water vole, or any part of, or anything derived from, such an animal. 9(5)(a); or
- publishes or causes to be published any advertisement likely to be understood as conveying that you buy or sell, or intend to buy or sell, any of those things 9(5)(b).

Exceptions to the above:

It is legal to tend a sick or injured water vole with the sole intention of releasing it when no longer disabled, or to kill a seriously disabled water vole that has no reasonable chance of recovering (W&CA 10(3)(a)&(b)).

Penalties.

Offences under section 9 of the Wildlife and Countryside Act 1981 (as amended) carry a maximum penalty of imprisonment for up to 6 months or a fine not exceeding level 5 (currently £5,000), or both. In addition. The courts may order the forfeiture of any vehicle or other thing that was used to commit the offence.

Licences

Licences are issued to permit acts that would otherwise be illegal. They must be issued under the purpose for which the proposed activity is being carried out. There are only a limited number of purposes for which licences may be issued in the UK. Within Wales these licences are issued by Natural Resources Wales (NRW).

Under 16 (3) of the Wildlife and Countryside Act 1981(as amended) NRW are able to issue licences of relevance to water voles for the following purposes:

(a) Scientific or Educational

A licence is required for the purpose of taking or disturbing a **water vole** or damaging or obstructing access to a breeding or resting place in order to carry out any kind of research or detailed survey.

(b) Ringing or marking

To take a **water vole** for the purpose of ringing or marking. This includes any type of mark, identification method or radio tracking tag.

(c) Conservation

Any activity carried out where the primary purpose of that activity is the long-term conservation of **water vole**. This can include management or restoration of **water vole** sites.

(f) preserving public health or public safety;

This may for instance be the restoration or maintenance of canals or footpaths beside rivers.

(h) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

This may relate to damage to the above caused by water voles. It is not possible to issue a licence for “development” under the Wildlife and Countryside Act in a similar way to some of the licences issued under the Habitats Regulations. Licences can be issued NRW for the purpose of ‘preserving public health and public safety’ e.g. restoration of a canal bank. However, not all developments fit under this heading.

The Wildlife and Countryside Act provides a defence against the above offences where the action is the incidental result of an otherwise lawful operation and could not reasonably be avoided (10(3)(c)).

Development issues and water vole sites.

The best advice from NRW is for the developer to ensure they address the following key steps:

- Establish if water voles are present on or near to the development site. Such information can be obtained from field surveys and consultation with local record centres.
- If water voles are near or adjacent to the site, then consider if the proposed activities are likely to trigger any of the above offence issues.
- If offence issues are likely then can the proposed work be amended to ensure that the work will not result in an offence? If it is not possible to remove the offences entirely then the proposed works should be amended to, where possible, reduce or remedy the adverse effects on water voles. Such actions should be documented in a method statement.
- If after such remedies are incorporated, offence issues still can’t be reasonably avoided then the developer will need to rely on the incidental result defence.

Use of the incidental result defence.

This defence under section 10(3)(c) of the Wildlife and Countryside Act allows the carrying out of lawful operations from which some harm to the species would arise in terms of the listed offences as an incidental result of actions that could not reasonably have been avoided.

Such a defence is only sustained if, as far as is reasonable, appropriate action is taken to safeguard the animals and their places used for shelter and protection. Ultimately only a court can decide what is reasonable and to what extent adverse impacts might have been reasonably avoided.

Q&A

Do I need a licence to survey for water voles?

If you are going to interfere with burrows e.g. block with hay and disturb water voles in their burrows or trap them, then you will. If you are simply surveying for holes, droppings and feeding signs you will not.

What do I do if I wish to undertake development work on a water vole site?

If the nature of the work is such that an offence is likely then you should discuss the matter with the regional NRW officer.

If water voles are on a site where I am undertaking work in line with an agreed method statement will I still be committing an offence?

Only a court can decide if an offence has been committed. However, there is a defence in law which states that a person is not guilty of an offence if he shows that the act was an incidental result of a lawful operation which could not reasonably be avoided 10(3)(c). As this defence is open to interpretation, it is not NRW policy to recommend sole reliance on this defence.

What about site crossing over the border between England and Wales?

For sites on the English side of the border you will need to consult with Natural England. For sites on the Welsh side you will need to contact the regional NRW officer.

Where can I find out more information on water voles?

1. *The **Water Vole Conservation Handbook** third Edition provides extensive advice on habitat management and mitigation, including a number of case studies.*
2. *The **Water Vole Mitigation Handbook 2016** provides comprehensive advice for developments and should be consulted alongside the **Water Vole Conservation Handbook**.*