

Business Engagement Assessment

Title of Proposal	Water Vole Class Licence for Ecological Consultants undertaking Development activities
Lead Regulator	<i>Natural England</i>
Contact for enquiries	<i>Elaine Gill</i>

Date of assessment	<i>01/08/2015</i>
Which area of the UK will be affected by the change(s)?	<i>England</i>
Net Cost to Business (EANCB):	Unquantified net cost
Does this include implementation of Red Tape Challenge commitments?	<i>No</i>

Stage of assessment	<i>Draft</i>
Commencement date	<i>01/01/2016</i>
Price and Present value base years	2014
Is this directly applicable EU or other international legislation?	<i>No</i>

Brief outline of proposed change in regulatory action

Natural England proposes the introduction of a Class Licence for Ecological Consultants to legitimise the 'Displacement' of Water Voles (*Arvicola amphibius*) in situations where legal development activities could result in the disturbance, injury or killing of water voles or damage to water vole burrows. 'Displacement' is the cutting of vegetation to bare ground in areas where there are signs of water voles in order to encourage the water voles to abandon their burrows, so removing the water voles from the risk of harm from the proposed development activities. This is a new licence that will enable ecological consultants to continue to comply with best practice management of wildlife whilst reducing the risk of prosecution.

Under the proposal, individual Ecological Consultants would apply to be a Registered Person under the Class Licence; once registered they may authorise appropriately trained Assistants to act under their supervision. In line with licences already issued by Natural England to trap water voles that are in the way of development, this Class Licence would be issued for the purpose of 'Conserving Wild Animals' (specifically water voles); action taken under this licence must therefore also provide a conservation benefit for water voles.

Why is the change proposed? Evidence of the current problem?

Water voles and their burrows are protected by the Wildlife & Countryside Act 1981 (as amended). Where the presence of water voles conflicts with permitted development, mitigation to protect the water voles must be implemented. For lengths of bank up to 50 m, current best practice is to cut vegetation to bare ground prior to the commencement of works in order to make the habitat unattractive for water voles, so encouraging them to move to alternative, adjacent favourable habitat outside of the area affected by the development. This 'Displacement' is considered to be most effective in early spring when water vole populations are at their lowest and are more mobile. To date, people undertaking Displacement have relied on the Wildlife & Countryside Act (1981) Section 10(3)(b) defence "...an incidental result of a lawful operation and could not reasonably have been avoided...". A review by water vole ecologists and Natural England of the reliance on this defence for Displacement of water voles has concluded that, as the removal of vegetation is being undertaken with the specific objective of encouraging water voles to leave their burrows, this defence cannot be relied upon and the activity should therefore be licensed. Although no prosecutions have to date taken place with regard to this activity, it is now Natural England's view that, if unlicensed, it is unlawful and poses a risk of prosecution to people who use it. New guidance on survey and mitigation for water voles, which will update the Water Vole Conservation Handbook (2011) is being produced by water vole ecologists and is due to be published in 2015. The Class Licence has been drafted in consultation with the authors of this revised guidance, and this guidance will reflect the conditions of the Licence.

The move to a Class licence, as opposed to an individual licence for each location affected, provides a means of minimising the regulatory burden of licensing this activity, while improving environmental outcomes by driving up standards in working practices. Conditions within the Class licence will require all Registered Persons to follow agreed best practice in water vole conservation.

Activities outside of the scope of the Class Licence will require the Ecological Consultant to apply for an Individual Licence.

Which types of business will be affected? How many are affected?

Ecological Consultancies within England will be directly affected by this change. Indirectly, parties undertaking the development activity (e.g. private developers, local authorities, public bodies) could be affected through delays if ecological consultancies are not registered for the Class Licence. Ecological consultancies may also choose to pass on the costs to developers (in time) of administering the licence (e.g. registering and reporting).

The exact number of Ecological Consultancies in England is not known; individual Consultants may work both within a consultancy and independently. The CIEEM Professional Directory lists c. 330 members who provide survey and management services in respect of water voles in the UK. On the assumption that the CIEEM Directory entries are a true reflection of the capabilities of CIEEM members, this figure represents the maximum number of CIEEM members that would register for the Class Licence within England; however, as not all Consultants are a member of CIEEM, depending on how many CIEEM members work solely in Wales and Scotland, the figure could be higher.

How will the change impact these businesses?

Please briefly describe the impact. Include estimates of all financial costs and benefits, indicating how these change over time. Please also describe impacts which cannot be readily monetised.

The Class Licence will be introduced for an environmental intervention that is not currently subject to licensing, therefore the number of applications is not known and the cost to users can only be estimated. This (unknown) cost has the benefits to the user of the licence of enabling best practice in wildlife management and reducing the risk of prosecution and associated reputational damage. Its introduction will provide consistency with licensing of water vole Displacement in Scotland and the proposed introduction of licensing in Wales. While it is anticipated that the financial costs to businesses will outweigh the financial benefits to businesses, the licence will deliver benefits to society of improved wildlife management and protect the licensee from prosecution.

This licence also commits the Registered Person to provide positive benefits to water voles affected by the activities it permits.

Introduction of a Class Licence for Displacement of Water Voles will result in the following impacts and costs per Licence:

The licence will be issued free of charge

Financial Costs

These are estimated using a rate of £62.50 per hour for costs incurred by ecological consultants (based on standard rates employed by Defra).

One-off costs for registration:

Estimate 1 hour to register for the Class licence (a one-off procedure) = £62.50;

Owing to the potential risks to water voles, applicants will require competence and experience with water voles and the Displacement technique in order to register for this Class Licence. For some applicants this will include the provision of references.

Additional cost of registration if references are required (2 hours) = £125.

Ecological consultancies may need to update their internal guidance to reflect the conditions of Class licence (3 hours) = £187.50

Annual costs:

An annual report will be required (this is required for all Class and individual licences); receipt of this report will automatically trigger the renewal of the Licence provided that conditions of the licence have not been breached.

Estimate 3 hours to produce the annual report = £187.50

Total Cost:

Total cost: £437.50 in the first year of registration for the Class Licence. The costs in subsequent years will just be the cost of producing the annual report (£187.50).

Other negative impacts

Because the technique of Displacement has been used for many years, Ecological Consultants that already provide services with respect of water voles are likely to have the competence and experience required to register for the Class Licence. However, applicants who lack the necessary experience will be refused a licence. This could result in direct losses to the consultant if the work goes to another consultancy and delays and extra costs for the developer while either an alternative consultant is engaged or the original consultant acquires the necessary experience. Once registered, provided that the proposed action is within the scope of the licence, it may be used anywhere in England.

There are no impacts on access to markets as the Class Licence will apply to all Ecological Consultants working on sites located in England. It is understood that Natural Resources Wales intend to implement an individual licensing approach and Scottish Natural Heritage already licence this process, so the burden in England will be no greater than that elsewhere in Great Britain, and possibly less owing to the use of a Class as opposed to an individual licence.

Benefits

The benefits arise from a reduction in the risk of prosecutions and the associated reputational risk and compliance with best practice by Ecological Consultants undertaking Displacement of water voles.

The impact on business confidence/perceptions is positive as the Class Licence ensures that Ecological Consultants can undertake their activities with confidence of not being liable to prosecution and in line with agreed and published guidelines.

Impact on small businesses

Please briefly describe any special impact the change will have on small businesses – especially those with fewer than about 25 staff, where the owner/manager is often responsible for regulatory matters. Please consider for instance the implications for management time; the significance to a small business of the effort involved in understanding and implementing the change.

The introduction of the Class Licence will impact on all Ecological Consultants (small and larger businesses) that undertake Displacement of water voles. Ecological Consultants may pass the cost on to the developers that require the work (some of which may be small businesses). It is necessary for the Licence to apply to all businesses in order to achieve the aims of enabling compliance with best practice in the management of wildlife and reducing the risk of prosecution.

The impacts on Ecological Consultants comprise the cost per applicant to become a Registered Person and annual reporting set out in previous sections. The costs per Registered Person are the same for all businesses. The cost will therefore be lower for businesses with fewer staff that apply to become a Registered Person. As a result, the cost to small businesses that have fewer staff undertaking Water Vole Displacement will be lower than for large businesses with more staff undertaking this work. The cost of obtaining a licence is being minimised through the introduction of a Class Licence, which will permit Registered Persons to undertake Displacement at an unlimited number of locations throughout England rather than submit an application for an individual licence for every site where Displacement is required.