

Ponds and the law

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Reviewed by Steve Head

In 2000 the United Kingdom adopted the EU Water Framework Directive. Whilst ponds are pretty much overlooked by the Directive, it is intended to protect all water bodies. Organisations such as the Freshwater Habitats Trust are actively pressing for countryside ponds to receive more attention through River Basin Management Plans that are being produced as a result of the Directives adoption. Otherwise local, national, European and international law could all potentially have relevance to ponds and the species they are known to support. It is therefore useful for any pond owner to be aware of them. It may be best to describe these where they are of relevance to a particular activity you may be thinking of carrying out.

Before any lawful implication of moving pond life between ponds is considered, remember that the majority of native species will find their own way to a pond provided that it exists with the pond network; especially if the pond is new. By moving pond life you might also be inadvertently introducing a new pest or disease into your pond. Similarly, can you be sure that the source population is robust enough to do without those being removed?

Introducing, controlling or removing plants

Under the Wildlife and Countryside Act 1981 it is illegal to plant in the wild, or cause certain invasive non-native plants to grow in the wild including several that can be associated with water. These are Japanese knotweed (*Fallopia japonica*), water fern (*Azolla filiculoides*), water lettuce (*Pistia stratiotes*), parrot's feather (*Myriophyllum aquaticum*), floating pennywort (*Hydrocotyle ranunculoides*), Australian swamp stonecrop (*Crassula helmsii*) and curly waterweed (*Lagarosiphon major*). If you have any of these species in your garden, don't panic! You are not legally obliged to remove or control them within your garden but you should try to ensure that they do not spread.

From April 2014 the Department for Environment, Food and Rural Affairs (Defra) banned the sale of a number of these species: water fern, parrot's feather, floating pennywort, and Australian swamp stonecrop as well as water primrose (*Ludwigia grandiflora*). Japanese knotweed is regarded as 'controlled waste' under the Environmental Protection Act 1990 and must be disposed of to a licensed landfill. Further information can be found here:

www.gov.uk/prevent-the-spread-of-harmful-invasive-and-non-native-plants

Introducing, controlling or removing animals

Similar to plants, the Wildlife and Countryside Act 1981 makes it illegal to release or allow to escape into the wild any animal which is not ordinarily resident in, or does not regularly visit, the United Kingdom. Those that may be associated with ponds are a range of crayfish species including the signal crayfish (*Pacifastacus leniusculus*), Italian crested newt (*Triturus cristatus*), Alpine newt (*Triturus alpestris*) and the European pond terrapin (*Emys orbicularis*). For detailed information, visit the GB Non-Native Species Secretariat (<http://www.nonnativespecies.org>).

In the United Kingdom, the Environment Agency enforces The Keeping and Introduction of

Fish (England and River Esk Catchment Area) Regulations 2015 which apply to the keeping of and introduction of fish to 'inland waters'. However, the Regulations explicitly state that '*Garden ponds less than 0.4 hectares in area, which are not fished, have no links to other waters and are located within the curtilage of a residential property*' are exempt. If your garden pond is not exempt, more information can be found here:

<https://www.gov.uk/government/publications/2010-to-2015-government-policy-freshwater-fisheries/2010-to-2015-government-policy-freshwater-fisheries>

There are a number of species that receive varying levels of protection through the Wildlife and Countryside Act 1981 including the common toad (*Bufo bufo*), common frog (*Rana temporaria*), grass snake (*Natrix natrix*) and slow worm (*Anguis fragilis*). The great crested newt (*Triturus cristatus*) is a European protected species protected both under the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats etc.) Regulations 1994. Should one make your pond its home you should feel very privileged indeed, however, there are various actions that could constitute a lawful offence if you knowingly disturb a great crested newt. For further information see: <https://www.gov.uk/great-crested-newts-protection-surveys-and-licences>

Building or removing a pond

Building a garden pond is unlikely to require planning permission. However, there are circumstances where advice from the local planning authority might be sought in order to avoid potentially costly and unfortunate circumstances later, for example:

- The Town and County Planning Act 1990 (as amended) may consider the creation of a pond an engineering operation if you plan to use machinery
- The creation of an inappropriately placed pond might be deemed to have a negative landscape impact (if it's highly visible) or interfere with land drainage

Hopefully you will never want to remove a pond! However, there are some perfectly good reasons why this might be required, for example as part of a development. If this is the case, you should once again ask for advice from your local planning authority. Under the Natural Environment and Rural Communities Act 2006 local planning authorities have a 'biodiversity duty' by which they must show regard for conserving biodiversity in all their actions. Under Section 40 of the same Act there are a wide range of species that should also be given due consideration as part of an application process.