



THE PERSECUTION OF BADGERS:

A GUIDE FOR
INVESTIGATORS IN
ENGLAND & WALES



Badger persecution is one of the National Wildlife Crime Unit's wildlife crime priorities.

The UK Badger Persecution Priority Delivery Group is tasked with working towards the prevention of badger crime, and enforcement of legislation around it.

“The NWCU supports the continued rollout of this guide, which is invaluable to our officers on the front line of wildlife crime. Badger persecution is a national wildlife crime priority and should be recognised, investigated and policed with the importance it deserves. Be under no illusion that the people who harm our animals also harm vulnerable people, and are often linked to other traditional serious crimes.

Policing wildlife crime in today's climate is a challenge, and it's guides like this that make the job of our enforcers easier to undertake and deliver. This wouldn't be possible without key partners, such as Badger Trust and Naturewatch Foundation, who I would like to thank for providing this important resource to our national network of Wildlife Crime Officers.”

Kevin Kelly

Chief Inspector 1072, Head of National Wildlife Crime Unit





CONTENTS

Forewords	6
Introduction	7
Badger Persecution Timeline	8
Legislative Overview	
Protection of Badgers Act 1992	10
Wildlife & Countryside Act 1981	10
Additional Legislation	
Animal Welfare Act 2006	11
Wild Mammals (Protection) Act 1996	11
Hunting Act 2004	11
Control of Pesticides Regulations and Food and Environment Protection Act	11
Persecution and Offences	
Badger digging	12
Badger baiting	12
Sett Interference	
Sett blocking	15
Development, Construction and Roadbuilding	15
Disturbance	16
Forestry	17
Other Offences	
Poisoning and gassing	18
Snares, traps and nets	18
Pesticides	19
Poisons	19
Lamping	19
Shooting	19
Table of Potential Offences	20
Investigation	
Initial Investigation	23
Evidence of Badgers	24
Badger Facts	31
Notes on current use	32
Investigative Procedure	34
Dogs	34
Veterinary Examination	35
Other Potential Evidence Sources	35
Investigative Assistance	
Welfare Impact Statements	36
Licenses	36
Expert Witness	37
Further Training	41
Useful Organisations	41
Terms	43
Appendix 1 - Legislation	
Protection of Badgers Act 1992	45
Wildlife and Countryside Act 1981	48
Hunting Act 2004	52
Appendix 2 - Guidance on Current Use from Statutory Licensing Bodies	54

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FOREWORDS

Despite being a legally protected species, the badger is probably the most persecuted wild animal in Britain today.

Across the UK and Ireland, badgers face multiple threats from badger baiting with dogs, to persecution on shooting estates and the illegal destruction of their setts by fox hunts and building developers.

To counter these threats, it is hugely important that we provide expert advice and training on badger persecution and the law to police officers, the Crown Prosecution Service and expert witnesses from our network of over 50 local badger protection groups.

Badger Trust is delighted to continue to partner with Naturewatch Foundation on the 2nd reprint of this important guide, covering all aspects of the law in relation to badger persecution.

We believe this manual, combined with the wildlife crime enforcement training courses run by Badger Trust for Police Constabularies across England and Wales, continues to play a vital role in the fight against badger persecution and will result in more wildlife criminals being brought before the courts.

Peter Hambly
Executive Director, Badger Trust

Naturewatch Foundation is delighted to partner with the Badger Trust in the publication of this training manual, to assist the police and Crown Prosecution Service (CPS) to combat the illegal persecution of badgers, which is a current UK wildlife crime priority.

Despite being a protected species, badgers continue to be a popular target for crime. Badger baiting in particular, is as much of a thriving bloodsport today as it was when the Badgers Act was introduced in 1973.

This manual continues to enhance the Badger Persecution Police Training course, which we have previously jointly funded with Badger Trust, and which have been attended by most forces across England and Wales. Both the courses and this training manual are a much-needed addition to the professional training of police and the CPS as they are at the forefront of the fight against illegal badger persecution.

The valuable partnership of Naturewatch Foundation and Badger Trust on this guide is contributing to the overall UK strategy to combat badger crime, and will help bring more offenders before the courts.

Sarah Carr
CEO, Naturewatch Foundation

INTRODUCTION

Badgers are one of the UK's most iconic species and have enjoyed a long history in England and Wales with the earliest evidence of badgers dating back millions of years.

Sadly, badgers have faced sustained cruelty and persecution by man for hundreds of years and despite their current legal protection, continue to be ill-treated at some of the highest ever rates. As a result, in 2009 badgers were made a UK Wildlife Crime Priority.

Badger Trust, the voice for badgers in England and Wales, works to stop badger crime as a priority campaign aim. As part of this they provide police forces with training and advice, and offer guidance to support investigators. The Trust also provides support and training to its network of local badger protection groups, and advice to members of the public - encouraging and educating them to recognise, record and report badger crime so that the true level can start to be recognised.

Naturewatch Foundation has developed a wide range of sustainable animal welfare projects, both in the UK and around the world. This includes a UK wide badger baiting awareness campaign aimed at ending badger baiting and other acts of cruelty towards badgers involving the use of dogs. An expansion of their wildlife crime campaign means that the Foundation also has an investigation capacity covering any named individuals hunting wildlife with dogs, as well as a focus on partnership working, campaigning and educational programmes for our younger generations.

This publication aims to outline the legislation currently in place to protect badgers in England and Wales, and to provide guidance to police forces regarding best practice in the investigation of crimes against badgers and the enforcement of the law.

There is much to do to tackle and combat badger crime, but together we can help end the long history of badger persecution in England and Wales.

BADGER PROTECTION TIMELINE

1835	1876	1911	1973	1981	1986
The Protection of Animals Act banned the baiting of certain animals including badgers provided they were deemed to be captive.	The Cruelty to Animals Act was passed but did not apply to wild animals unless captive.	The Protection of Animals Act, prevents unnecessary suffering. However this was still only in relation to domestic or captive animals.	The Badgers Act was introduced.	The Wildlife and Countryside Act lists the badger as a Schedule 6 protected species.	The National Federation of Badger Groups was formed and later became the Badger Trust.

1992

The Protection of Badgers Act made it a criminal offence to wilfully kill, injure or take (or attempt to take) a badger. In addition to now giving protection to their homes (setts).

1996

Wild Mammals (Protection) Act.

2000

Naturewatch Foundation began campaigning against the illegal persecution of badgers and in 2017 expanded its campaigning activities in this area with the appointment of a Wildlife Crime Adviser.

2004

Hunting Act made it illegal to hunt wild mammals (includes Badgers) with dogs.

2006

Animal Welfare Act.
Natural Environment & Rural Communities Act, Schedule 5 Part 4 amended the Wildlife & Countryside Act 1981 to allow a power to obtain a warrant.

2009

Badgers made a UK Wildlife Crime Priority.

LEGISLATIVE OVERVIEW

Protection of Badgers Act 1992

The main piece of legislation pertaining to badgers is the Protection of Badgers Act (PBA), 1992 (see Appendix 5a for the full legislation).

THIS ACT MAKES IT ILLEGAL FOR A PERSON TO;

- » wilfully kill, injure or take, attempt to kill, injure or take a badger.
- » have in his possession, or under his control, sell or offer to sell any part of a badger or anything derived from a badger, either living or dead (except as permitted under the Act).
- » cruelly ill-treat a badger
- » damage, destroy, obstruct or cause a dog to enter a badger sett;
- » or disturbing a badger when it is occupying a badger sett.

The above gives a very brief outline of some of the offences under the PBA (as amended), but is not intended to be exhaustive. Please refer to the full Act when investigating a potential offence.

NB. There are no powers under the Protection of Badgers Act to enter premises (this includes land and buildings) without a warrant. However, the Natural Environment & Rural Communities Act 2006 under Schedule 5 Part 4 amended the Wildlife & Countryside Act 1981 to allow a power to obtain a warrant to do so.

The Wildlife and Countryside Act, 1981

The Wildlife and Countryside Act 1981 also lists the badger as a Schedule 6 protected species and powers under this legislation should be referred to and applied accordingly.

THE ACT PROHIBITS CERTAIN METHODS OF KILLING OR TAKING WILD ANIMALS (LISTED IN SCHEDULE 6), INCLUDING;

- » snares,
- » bow / crossbow,
- » traps and nets,
- » poison, stupefying substance or gas,
- » electrical devices,
- » explosives,
- » any automatic or semi-automatic weapon;

AND AN OFFENCE TO USE

(FOR THE PURPOSES OF KILLING OR TAKING THAT ANIMAL)

- » any device for illuminating a target or sighting device for night shooting;
- » any form of artificial light, mirror or other dazzling device; or
- » uses any mechanically propelled vehicle in immediate pursuit of any such wild animal for the purpose of driving, killing or taking that animal.

ADDITIONAL LEGISLATION

Animal Welfare Act 2006

The Animal Welfare Act is a piece of legislation which aims to ensure that animals are not mistreated by humans, whether through improper care or sheer cruelty... housing with or without other animals. protection from suffering, disease and injury. Sections 7 and 9 give protection to all live animals under the control of man and their needs. This includes animals taken from the wild or caught in traps and snares - it also applies to dogs which may be used for badger baiting and it has been used successfully where it is shown that a badger has come under the control of man and has no chance of escape.

AN ANIMAL IS A “PROTECTED ANIMAL” FOR THE PURPOSES OF THIS ACT IF —

- (a) it is of a kind which is commonly domesticated in the British Islands,
- (b) it is under the control of man whether on a permanent or temporary basis, or
- (c) it is not living in a wild state.

OFFENCES INCLUDE:

- » causing a protected animal to suffer unnecessarily, knowing it would suffer – s4(1)
- » unreasonably allowing an animal in that person’s care to suffer from somebody else – s4(2)
- » mutilating an animal (except where destroying an animal in an appropriate and humane manner) – s5
- » animal fighting – s8
- » causing an animal to fight
- » receiving money from admission to or publicising an animal fight
- » providing information about an animal fight to another to enable or encourage attendance
- » making a bet as to the outcome of an animal fight
- » taking part in an animal fight
- » training an animal to take part in a fight
- » keeping any animal fighting premises
- » attending an animal fight (without lawful excuse)
- » possessing a recording of an animal fight that took place in the UK (without lawful excuse) with intent to supply

- » showing another person a recording of an animal fight that took place in the UK (without lawful excuse)
- » failing to take reasonable steps to ensure the needs of an animal for which he is responsible are met to the extent required by good practice - S9 (1)
- » failing to provide a suitable environment and diet, and provide for an animal’s need to be able to exhibit normal behaviour pattern, any need to be housed with or apart from other animals and its need to be protected from pain, suffering, injury and disease. - S9 (2)
- » Reference to the full Act will be required to understand the potential offences.

Wild Mammals (Protection) Act 1996

This legislation makes it an offence (subject to exceptions) to kick, beat, nail or impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering.

In this Act “wild mammal” means any mammal which is not a “protected animal” within the meaning of the Animal Welfare Act 2006. Refer to the relevant sections of the Act in Appendix 5 for more information.

Hunting Act 2004

NB. Please refer to the full Act, only relevant sections are included within this guide.

This Act makes it an offence to hunt a wild mammal with a dog, however investigating officers should be aware of all exemptions under Schedule 1 and that these exemptions may be used by offenders as a defence. Further information on relevant sections and powers of this act are provided in Appendix 5.

Control of Pesticides Regs 1986 and the Food & Environment Protection Act 1985

Refer to these Acts when dealing in relation to incidents involving poisons and pesticides.

A photograph of a badger lying on its side on a patch of brown earth and sparse green grass. A blue tarp is partially visible in the upper left and right corners of the frame. The badger's body is mostly obscured by the large white text overlay.

PERSECUTION & OFFENCES

To assist in the investigation of potential offences it is important to understand some of the types of persecution that badgers face, such as:

- » Digging & Baiting
- » Sett interference
- » Deliberate sett blocking
- » Damage and disturbance during development and road construction
- » Damage and disturbance due to forestry work
- » Snares, traps and nets
- » Poisoning
- » Gassing
- » Lamping
- » Shooting

BADGER DIGGING AND BAITING

The type of people involved in these activities are, by the very nature of the activity, likely to be extremely violent. Many may have previous convictions for violence and may well be involved in other serious crime such as dishonesty or drug dealing. They are likely to resist arrest (or detention) and sufficient resources should attend to be able to deal effectively with them. Members of the public should not approach them.

There are fundamental differences between 'badger digging' and 'badger baiting' but they are connected.

Unfortunately, a number of terrier owners take their pride in their dogs' abilities to the extreme. For these people, battle-scarred terriers with reputations as good foxers, and a reputation for good badger dogs make them status dogs and command higher prices when selling/breeding from stock. However, it is the badger that is seen as the ultimate test for a working terrier.



Images show dug setts, more experienced diggers may backfill and hide the hole.

Images courtesy of the RSPCA, Tris Pearce and Humberside police

Badger Digging

Badger Digging is seen as a sport, the bigger and more challenging the 'dig' the better, and the badger is the trophy at the end. Methods can vary and historically badger diggers had their own preferred methods, however, it traditionally involves earth dogs entering a badger sett. The dogs then make their way along the system of tunnels and chambers until they find a badger when perpetrators dig down by hand into the sett to reach the intended target.

It is currently common practice for diggers to use 'ferret finders', locator collars, a small transmitting device which was originally designed to track ferrets underground. Purpose-made 'terrier finders' or adapted 'ferret finders' are attached to the earth dog before entering the tunnel. This device can then transmit a signal to the handler above ground who will be holding the receiver enabling them to track the dog's progress. Once the dog has located a badger, it will signal for the handler to dig down.

Ideally, the terrier should not engage with the badger and just stand its ground. However, the two are likely to engage, and considering the immense strength in a badger's jaw and powerful front legs, it is likely that serious injuries may be caused to the dog at this stage. The

dog is owned and is therefore protected by animal welfare laws. At this point, the badger may not be regarded as captive, and therefore would not be protected by animal welfare legislation.

Once the tunnel or chamber is accessed the first task for the digger is to remove the dog, which can be difficult, particularly if the badger has latched onto the snout of the dog. This often causes serious injuries to the dog's top and bottom jaw. In this case, it will be extremely difficult to get the badger to let go of the dog, due to its extremely powerful jaw. The dog is sometimes removed by taking hold of its rear legs and pulling, which on some occasions extracts the dog from the sett with the badger still attached. If the dog and badger are not locked together, then diggers may prevent the badger's escape by jumping into the hole and taking hold of its tail. Once out of the sett, the badger may be bagged, placed in a cage for baiting elsewhere, or simply thrown to the dogs (commonly both earth and running dogs) in situ.

It is crucial in potential digging cases, to establish that the site fits the definition of a badger sett.

Under the Protection of Badgers Act, a badger sett is defined as any structure or place which displays signs indicating current use by a badger. However, 'current use' does not necessarily mean that a badger must be living in the sett.

If caught 'in the act', badger diggers are likely to state that they are digging for foxes or rabbiting. Previous history of the sett in this situation is invaluable in order to prove that it is a sett.

EXAMPLE:

Terrier men from local hunts may falsely use gamekeeper's exemption, claiming it is not a badger sett and that they are using that exemption to remove a fox. Badger diggers may also block setts whilst claiming that they are fox earths, and that the blocking is to prevent the fox from escaping and being chased.

BADGER DIGGING
CONTINUED...

Suspects may also state that they are trying to recover a terrier which had gone into the sett of its own accord and that they thought they could dig it out. This is easily disproved as few people take a spade with them when they go for a walk. If dogs are stuck down setts, it is advised by the licensing authorities that most terriers will extract themselves within 48 hours and a licence would be needed to physically attempt to retrieve any dog.

Much more common is the discovery of a scene after the culprits have left a sett which has been dug. It is in these situations that a thorough scene of crime examination is crucial.

Badger Baiting

Badger baiting can commence with the removal of the badger from its sett and then simply allowing the dogs to fight it immediately. It was common practice in the 1980s for a rectangular shaped hole to be dug alongside the sett or very close by. The badger would be thrown into the pit to fight. It is more common nowadays for baiting to occur at or in the sett, possibly

against one terrier, with the odds in this case against the dog.

A baiting session typically results in the death of the badger or badgers, and potentially serious injuries to the dogs.

However, several may be encouraged to fight the badger during a baiting incident, either one after the other, or several at the same time. Larger, more powerful

dogs, such as the Staffordshire Bull Terrier or bull terrier-lurcher crossbreeds, may also be brought in to fight. The result is the inevitable death of the badger.

In the 80s and 90s, badgers were more commonly removed from their setts by digging in order to be baited by dogs elsewhere, however this is now far less common.

A baiting session typically results in the death of the badger or badgers, and potentially serious injuries to the dogs.



Injured dog recovered from a badger baiting scene.

Image courtesy of Andy Swinburne.

SETT INTERFERENCE

Sett blocking

The blocking of badger setts is a serious problem which can potentially result in the death of a badger or badgers, whatever the objective. It might be the owner of a paddock who, for the safety of their livestock, fills badger holes to prevent injuries, or a householder with an allotment or garden who does not want badgers present. Legislation makes any blocking illegal, from 'soft blocking' — the practice of shovelling in loose soil from the spoil heaps or surrounding area — to 'hard blocking' which might involve stamping in heavy soil, using logs, fence posts or boulders.

Under the Protection of Badgers Act, there was previously an exemption which allowed fox hunts to block badger setts under certain conditions. This was repealed by the Hunting Act and no longer applies. Under this exemption, fox hunts used to use bags of straw or hay, to block entrances then remove them on the same day, or loose fill with soil etc. Although the use of bags has somewhat disappeared, we still see high numbers of badger setts across the country blocked. The statistics show an increase in the autumn and winter, with a drop off in the early spring.

It's always going to be a contentious issue and a difficult offence to prove, however

the fact is, if it is a badger sett in 'current use' then it cannot be blocked legally, even if a hunt claims that they are using the exemption in relation to shooting under the Hunting Act.



A blocked badger sett.

Image courtesy of Andy Swinburne.

Development, construction and road building

In most development situations, consultation and survey work is carried out properly by the developer and the

appropriate mitigation and licensing are put in place. There are still, however, situations, which occur when the developer accidentally damages a sett. In such accidental situations it may be as a result of poor communication between company managers and workers 'on the ground'.

However, on occasion, a developer may choose (due to financial or time constraints) to ignore the presence of a sett and continue with

development work with no mitigation or protection in place. This may result in disturbance or damage to, or in extreme cases even the destruction of a sett and the potential killing of a badger or badgers.



Top Image shows development work close to a sett entrance.

Bottom Image shows a digger cutting through a tunnel beneath the surface.

Images courtesy of Tris Pearce.

N.B. It is well worth checking with the planning portal or your local planning authority for planning consents that may have been granted in relation to the location.

EXAMPLE:

A building company in Somerset were constructing 185 houses, each to sell at over £250,000. A badger sett was present on site which was delaying work.

Over a weekend the sett was bulldozed flat and the company subsequently charged.

They were fined £2500 plus costs, which was a small sum compared to what the delay in excluding the badgers would have cost.

In most cases these offences will be reported to the police by NE/NRW, The Badger Trust or a local Badger Group, all of whom will be willing to assist in obtaining evidence for a report to the CPS.

Disturbance

Section 3(e) of the Protection of Badgers Act 1992 makes it an offence for a person to interfere with a badger sett by disturbing a badger that is occupying the sett.

THERE ARE TWO ELEMENTS TO THIS OFFENCE:

1. There must be an action, capable of disturbing a badger, which amounts to interference with a sett; and
2. A badger must be occupying the sett at the time of the disturbance.

The Act does not go as far as defining either interference or disturbance and we are not aware of any case law on the meaning of section 3(e) of the Act. We therefore have to rely on the ordinary everyday meaning of the words.

THE OXFORD ENGLISH DICTIONARY DEFINES “TO DISTURB” AS:

- » To agitate and destroy (quiet etc);
- » To break up the quiet, tranquillity;
- » To stir up, trouble, disquiet, to agitate; to unsettle;
- » To agitate mentally;
- » To interfere with the settled course of operations.



Felled trees near to a sett.

Image courtesy of Tris Pearce.

Disturbance is therefore something less than what might otherwise be considered damage to a sett. The distinction is recognised by the existence of two separate offences in the Act; one where there is damage

to a sett and one for disturbance to a badger occupying a sett. However, it is also something more than limited noise or activity near a sett at levels which badgers commonly tolerate, without apparently being disturbed.

Natural England provides guidance on what may constitute disturbance. This guidance relates solely to England. Different interpretations may exist in Wales and Scotland and the relevant licensing bodies in those countries should be consulted for advice.

Licensing of “disturbance” at badger setts *(reproduced with permission from Natural England)*

Natural England believes that “badgers are relatively tolerant of moderate levels of noise and activity around their setts and that low or moderate levels of apparent disturbance at or near to badger setts do not necessarily disturb the

badgers occupying those setts.”

As such, they do not believe that such levels of apparent disturbance around setts require a licence under section 10 of the Act.

They go on to state: “In reaching this view, we have also taken account of the fact that we do not believe that the issue of licences for “trivial” levels of apparent disturbance at setts, which are likely to have little or no effect on any badgers present, brings any conservation or other tangible benefits or is necessary in terms of the potential impact

on the badgers. On the other hand, it can represent an unnecessary burden on businesses or individuals worried that their actions may “disturb” badgers occupying such setts.

Persons involved in activities near setts will need to exercise judgment as to whether their action may or may not cause disturbance to badgers.

IN ORDER TO PROVIDE CLARITY AND GUIDANCE, SOME EXAMPLES OF ACTIVITIES AT OR NEAR SETTS THAT WE DO NOT CONSIDER LIKELY TO CAUSE DISTURBANCE TO BADGERS, AND THEREFORE WOULD NOT NORMALLY EXPECT TO REQUIRE A LICENCE, INCLUDE:

1. Development, or other activities occurring close to badger setts (use of hand tools and/or machinery), where there is no reason to believe that the ‘disturbance’ will be greater than that which badgers commonly tolerate, and therefore any badger(s) occupying the sett are unlikely to be disturbed;
2. Vegetation removal (including felling small trees or shrubs) over or adjacent to setts (using hand tools and/or machinery);

DISTURBANCE
CONTINUED...

NB. Any activity that will or is likely to cause one of the other interferences defined in section 3 (such as damaging a sett tunnel or chamber or obstructing access to a sett entrance) will continue to need to be licensed."

3. Clearing out of ditches/watercourses using machinery and/or hand tools where badger setts are present.

Persons involved in activities near setts will need to exercise judgment as to whether their action may or may not cause disturbance to badgers.

Further advice may be obtained from the Wildlife Management and Licensing Team on 0845 6014523 (local rate) or email wildlife@naturalengland.org.uk. This information is also provided at: www.naturalengland.org.uk/ourwork/regulation/wildlife

June 2009.

Forestry

One of many calls received every year in relation to badgers and works being carried out, is around the issue of tree clearance. Simply, guidance produced by Natural England and Natural Resources Wales details safe distances from badger setts in which trees can be cleared, and what should be licensed and what should not, but it is clear that before commencing the works the area should be checked.

Certainly, the use of heavy machinery must be restricted around a sett, and even light machinery such as chain saws should be restricted. The guidance from the licensing authorities states that it is important to be aware that badgers could be disturbed by work near their sett, even if there is no damage to the sett itself.

AS A GENERAL GUIDE FOR LICENSING PURPOSES, MEASURE THE DISTANCE FROM THE SETT ENTRANCE. THE FOLLOWING ISSUES SHOULD THEN BE CONSIDERED, WHICH PROVIDE GUIDANCE AS TO THE TYPE OF ACTIVITIES THAT WOULD REQUIRE A LICENCE IN ORDER TO BE CARRIED OUT LEGALLY:

1. Using heavy machinery (generally tracked vehicles) within 30m of any entrance to an active sett
2. Using light machinery (generally wheeled vehicles), particularly for any digging operations, within 20 m of any entrance to an active sett
3. Light work such as hand digging, scrub clearance or tree work within 10 m of an active sett.



Top Badger sett entrance shown below debris from felled trees.

Left Image shows a partially blocked sett entrance.

Image courtesy of Tris Pearce.

OTHER OFFENCES

Poisoning and Gassing

A badger sett may be gassed deliberately which is an offence under the Protection of Badgers Act 1992, section 11 of the Wildlife and Countryside Act 1981, and Section 7 of the Animal Welfare Act 2006. Despite the fact that there is no product licensed for gassing foxes, a sett may be gassed in the belief that it is a fox den, which, if animals are gassed, is in any case a potential offence under Section 7 of the Animal Welfare Act 2006. Though this latter Act normally relates to domestic animals, it also relates to wild animals which are under the control of man whether on a permanent or temporary basis. When setts, dens or burrows are gassed, they are blocked up, confining the animal inside, it could be argued that the animal is then under the control of man. Dealing with these incidents poses a serious risk to health or life: use expert assistance.

Advice & Guidance

If pesticides are thought to be responsible for the death or injury of badgers, this should be reported to the Wildlife Incident Investigation Scheme (WIIS), operated by Natural England (NE) on behalf of the Health and Safety Executive in England and by the Welsh Government (WG) in Wales. Report cases to the WIIS hotline, which operates in both countries: 0800 321 600.

NE and/or WG officers have powers of entry in relation to pesticide offences and they can arrange for relevant post-mortem examinations and toxicology. There is no cost to forces for these tests.



A badger is caught in a snare, set on a badger path passing under a fence

Image courtesy of Craig Fellowes.

Snares, traps and nets

As mammals included on Schedule 6 of the Wildlife and Countryside Act, 1981, badgers should not be snared, trapped or poisoned. To do so could be an offence.

Fox snares may be set where they could catch a badger, though intent to do so is difficult to prove. A case is more likely to be successfully prosecuted where a fox snare is set on a clearly defined badger run coming directly from a sett.

Evidence in these cases may be based on the relative proximity of the snare to the sett and the knowledge that the suspect may reasonably be expected to have of badgers in the area and also of good snaring practice.

Farmers and gamekeepers are expected to be aware of badger setts on their farm or land where they are involved in game management. Gamekeepers are also expected to be aware of fieldcraft and good snaring practice. Visiting pest controllers may not be aware of the presence of badgers but should have good fieldcraft skills and be aware of good snaring practice.

When investigating the apparent use of snares to catch badgers, do not discount their use by those involved in badger baiting to catch badgers for baiting purposes.

When investigating the apparent use of snares to catch badgers, do not discount their use by those involved in badger baiting to catch badgers for baiting purposes.

Traps used to catch badgers can include gin traps set at a sett entrance or strong cage traps baited with food. Whilst these methods may relate to farming and game interests, they may also be linked to the badger cull or badger vaccination programmes running across the UK. They are at least as likely to relate to methods used by those involved in badger baiting to catch badgers for baiting purposes.

Pesticides



TYPES OF POISONOUS GAS

Cymag (Hydrogen Cyanide):

appearance of flour, white powder. Banned since 2004. Unlawful to store (possess). May be illegally stored in non-original containers such as jars, plastic bags etc.



Phostoxin (Aluminium Phosphide):

spherical grey pellets. Some people can smell garlic when in contact with the product.

Talunex (Aluminium Phosphide):

spherical grey pellets. Some people can smell garlic when in contact with the product.



These products are used to illegally gas badger setts. Sett entrances will have product applied on the floor of the tunnel behind the entrance. Entrances may or may not then be blocked during an illegal gassing treatment.



In England, only NE officers wearing full breathing apparatus will handle or test such products. These cannot be seized but will normally be locked in secure containers on site and NE will issue enforcement notices requiring their disposal, should they be found to be illegal or stored incorrectly.

Top
Cymag

Middle Top
Cymag tins

Middle Bottom
Phostoxin & talunex

Bottom
Phostoxin tablets

Images courtesy of
Craig Fellowes

Poisons

It is not uncommon to find everyday common legal products used to administer a bait capable of killing badgers. Slug pellets stuffed into a potato and then rolled down into a sett are a great temptation for a badger. Crushed paracetamol may also be stuffed into a potato or an apple, just a couple of these tablets can kill a badger.



Slug pellets.

Image courtesy of
Andy Parr.

Lamping

Legal lamping, the use of a high-powered light at night in order for the target species to be shot humanely is a common practice and many pest controllers use this method to control foxes and rabbits. However, it is not always legal, and there are instances where the use of the 'lamp' is used in connection with the taking of badgers. It is more common for these persons to be using the light to illuminate the target and then set the dogs on it, and not for shooting.

If a lamp is being utilised to illuminate a badger this usually means that dogs are being used, and a pursuit will take place, so consideration should be given to the potential for offences under the Hunting Act.

This offence is more difficult to detect when thermal imaging devices are used, which is becoming more common.

Shooting

It is an offence under the Protection of Badgers Act to shoot a badger under S2, however, there are exemptions and one of those is the use of a firearm in the event of mercy killing, or under a licence such as the 'Cull'. However, there is evidence to suggest that badgers are controlled using a firearm, outside the 'cull zones' and evidence to suggest that occasionally captive bolt guns are used. Potentially people who dig badgers could be carrying a firearm, but that is not common.

It should, however be considered when dealing with hunt terrier men, as they will routinely carry a firearm to kill a fox under the 'gamekeepers' exemption.

TABLE OF POTENTIAL OFFENCES

Legislation	Section of Act	Powers of a constable
PROTECTION OF BADGERS ACT 1992		
Wilfully kill, injure or take a badger or attempt to do so	S.1(1)	<p>Where a constable has reasonable grounds for suspecting that a person is committing an offence, or has committed an offence under the Badger Protection Act 1973 and that evidence of the commission of the offence is to be found on that person or any vehicle or article he may have with him, the constable may— without warrant stop and search that person and any vehicle or article he may have with him seize and detain for the purposes of proceedings under anything which may be evidence of the offence.</p> <p><i>NB. There are no powers under the Protection of Badgers Act to enter the land without a warrant. However, the Natural Environment & Rural Communities Act 2006 under Schedule 5 Part 4 amended the Wildlife & Countryside Act 1981 to allow a power to obtain a warrant.</i></p>
Possess or control dead badger or badger derivative	S.1(3)	
Cruelly ill-treat a badger	S.2(1)(a)	
Use badger tongs in killing or taking a badger or attempt to do so	S.2(1)(b)	
Dig for a badger	S.2(1)(c)	
Use smooth barrel weapon of not less than 20 bore or unsuitable rifle and ammunition	S.2(1)(d)	
Damage badger sett	S.3(a)	
Destroy badger sett	S.3(c)	
Cause dog to enter badger sett	S.3(d)	
Disturb badger when occupying sett	S.3(e)	
Sell, offer for sale or possess or control a live badger	S.4	
Mark, ring or tag a badger	S.5	
1981 WILDLIFE AND COUNTRYSIDE ACT		
Set self-locking snare for badger	S.11(1)(a)	<p>Refer to Section 19 for powers</p> <p><i>“The NERC Act amended the WCA Act giving the following powers”</i></p> <p>Section 19</p> <p>(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence under the WCA, he may without warrant— stop and search that person; search or examine anything which that person may then be using or have in his possession; seize and detain for the purposes of proceedings anything which may be evidence or may be liable to be forfeited under section (2.1).</p> <p>(2) for the purpose of exercising the powers conferred by subsection (1) or arresting a person, (in accordance with section 24 of Police and Criminal Evidence Act 1984), for such an offence, enter any premises other than a dwelling.</p> <p>(3) Obtain a warrant to enter and search premises for the purpose of obtaining evidence. and in exercising the powers above take with him: any other person, and equipment or materials.</p> <p><i>“The definition of premises was amended to include land (including buildings).”</i></p>
Use self-locking snare, bow or crossbow or explosive to kill or take badger	S.11(1)(b)	
Set trap, snare, electrical device for killing or stunning, or poisonous or stupefying substance for badger	S.11(2)(a)	
Kill or take badger by the former means or by a net	S.11(2)(b)	
Use automatic or semi-automatic weapon, illuminating device night-sight or any gas or smoke to kill or take a badger	S.11(2)(c)	
Use mechanically propelled vehicle in immediate pursuit of a badger with the intention of killing or taking it	S.11(2)(d)	
Cause or permit the offences under the WCA	S.11(d)	

Legislation	Section of Act	Powers of a constable
ANIMAL WELFARE ACT 2006		Refer to Section 22-23 for powers
Cause unnecessary suffering to a badger which is permanently or temporarily under his control.	S.4	<p>A constable may seize an animal if it appears to him that it is one in relation to which an offence under section 8(1) or (2) has been committed.</p> <p>A constable may enter and search premises (except a private dwelling) for the purpose of exercising the power above if he reasonably believes— that there is an animal on the premises, and that the animal is one in relation to which the power under is exercisable. Seek a warrant authorising an inspector or a constable to enter premises, if necessary using reasonable force, in order to search for evidence of the commission of a relevant offence. In this section, “relevant offence” means an offence under any of sections 4 to 9, 13(6) and 34(9).</p>
Any offence relating to fighting a badger.	S.8	
Wilfully, without reasonable cause or excuse, administer or cause or procure, such administration of any poisonous or injurious drug or substance to a badger which is permanently or temporarily under his control.	S.7	
Failing to take reasonable steps to ensure the needs of an animal for which he is responsible are met to the extent required by good practice	S.9 (1)	
Failing to provide a suitable environment and diet, and to provide for an animal's need to be able to exhibit normal behaviour pattern, any need to be housed with or apart from other animals and its need to be protected from pain, suffering, injury and disease.	S.9 (2)	
HUNTING ACT 2004		Refer to Section 8 for powers
Hunting a wild mammal with a dog.	S.1	<p>Where a constable reasonably suspects that a person is committing or has committed an offence under Part 1 of this Act and that the evidence is likely to be found on his person, he may stop the suspect and search him.</p> <p>If the constable reasonably believes that evidence of the offence is likely to be found on or in a vehicle, animal or other thing of which the suspect appears to be in possession or control, the constable may stop and search the vehicle, animal or other thing.</p> <p>A constable may seize and detain a vehicle, animal or other thing if he reasonably believes that it may be used as evidence in criminal proceedings for an offence under Part 1 of this Act, or it may be made the subject of an order under section 9</p> <p>For the purposes of exercising a power under this section, a constable may enter land, premises other than a dwelling and a vehicle without a warrant.</p>

INVESTIGATION



INITIAL INVESTIGATION

The most common defence used in the 80/90's in relation to badger digging was that it was not badgers but foxes, a non-protected species requiring the prosecution to show that badgers were present, but not that foxes were absent. Badgers and foxes can, however, tolerate each other.

More recently, a frequently used defence is that whilst the scene was indeed a badger sett, it was not displaying signs of current use. The prosecution must, therefore, prove that it is a badger sett and that it is or was displaying signs of current use at the time of the offence.

It will be crucial to any investigation to consult an expert in badger ecology as early as possible in order to determine that it is indeed a badger set in current use. The initial scene visit does not have to be carried out by an expert and in many cases this will not be possible. It is vital to gather as much evidence as possible, and ideally film and photograph everything. It does not require an expert to gather the evidence.

Ideally, a person with experience should attend, and this can be a police officer with some knowledge of badgers and their setts. There are many individuals, members of badger groups, ecologists, consultants and experienced police staff who are more than capable of identifying an active badger sett and presenting evidence of the facts in court to assist the potentially appointed 'expert witness' in making an informed decision on the badger sett being in 'current use'.

It will be crucial to any investigation to consult an expert in badger ecology as early as possible in order to determine that it is indeed a badger sett in current use.

*Image courtesy
of Naturewatch
Foundation*

EVIDENCE OF CURRENT USE

Evidence of badgers and of any illegal activity must be recorded and documented, especially if they are to be removed. With badger setts in particular, important considerations are sole impressions, soil samples, badger hair samples, dog hair samples if found, human hair samples if found, or any item from which DNA can be obtained, or photographs to scale of a spade mark or other toolmark. As an aid, badger hair is noticeably oval in shape when rubbed between the thumb and forefinger.

If suspects are traced or caught at the scene, an examination of the interior of a vehicle, tools, clothing and dogs may provide matches with samples taken from the digging or offence site. If dogs can be traced within a day or two, an examination

of their faeces for the presence of badger hair may prove worthwhile. The investigation should also entail swabbing of dogs' mouth for badger DNA and comparison of samples of dogs' hair DNA with any found at the scene or in the mouth of dead or injured badgers.

In any search of suspects' houses, be aware of mobile phones, cameras, notes, diary

entries, photographs or videos of badger digging or baiting and DIY veterinary kits. Take any opportunity to gather intelligence about associates who may be involved by noting telephone numbers and names from diaries. Note any contact details for a vet, as this is a further possible source of evidence in the event that a dog required veterinary attention after baiting a badger. Consider taking photographs or video footage of old scars on dogs.

Ideally, if an expert witness is attending the scene, evidence should be left in situ, but factors such as time of day, weather conditions or time delay, etc. should be considered.

Several British species live in holes in the ground with each leaving individual marks and signs, enabling the occupant to be identified. Holes can vary greatly in size and shape and, although some are lived in permanently, others are only used temporarily. Often when one species is not in occupation another species is and therefore it is important to establish whether the hole is a badger sett, and also whether it is occupied by a badger. Survey the ground in the area and look for signs of badgers as detailed below. Pay particular attention to linear features, hedgerows, and woodland.



Baited badger

Image courtesy of Andy Hardman

Several British species live in holes in the ground, with each leaving individual marks and signs, enabling the occupant to be identified.

BADGER SETT ENTRANCE HOLES

These are generally oval or ovoid in shape, measuring around 20 to 25cm across at the widest point and around 30 cm in height. Whilst this can vary a great deal, the hole will be big enough to accommodate a badger and will not narrow further along the tunnel. There is often a large pile of earth called a spoil heap just outside the hole. This spoil heap may contain badger hairs and discarded vegetation which has been used as bedding within the sett.

The sides of the entrance holes are usually polished smooth from repeated use.



Badger sett entrances vary depending on the type of substrate.

Images courtesy of Steve Hawkes and Craig Fellowes.

HAIRS

Badgers have distinctive guard hairs which cover their body and give it its colouring. They are a dirty white with a white tip and a dark band approximately 1cm wide below it. The hairs are distinctive in their structure being around 7cm long, oval in cross section and coarse, almost wiry, in texture. The unique oval shape can be identified by rolling the hairs between finger and thumb. No other mammal found in the wild in Britain has guard hair that feels like this. These guard hairs can often be found in spoil heaps or caught on barbed wire or brambles where badgers have passed through.



Guard hairs caught in barb wire above a badger path

Image courtesy of Jo Bates-Keegan

EVIDENCE

LATRINES OR DUNG PITS

Badgers are the only animals in Britain who use an open dung pit for their droppings. However, badger dung can also sometimes be found on the ground. Where a number of these small, shallow dung pits occur together they are known as a latrine. Latrines are not easy to find and sometimes can be a considerable distance from setts, especially when badgers are marking their territory. However, it is not unusual to find badger dung at or very close to setts or alongside badger paths and at boundaries, and it is believed that this is the marking of territory.



Badger dung may vary due to seasonal diet.

Images courtesy of Steve Hawkes and Craig Fellowes.

SCRATCH POSTS/TREES

Scratch marks may be found at the base of nearby trees, a dead tree, fallen branches or even on stones and walls. This is where badgers have stretched their muscles and joints, cleaned and sharpened their claws, and it may also have a marking purpose as badgers have scent glands between their toes.



Scratch marks form four or five parallel lines in the bark of nearby trees.

Images courtesy of Craig Fellowes.

PRINTS

Badger paw prints are very distinctive, with five toes and a kidney shaped pad. In soft mud, claw marks may be visible. Foxes and dogs are four-toed. Look for these particularly around spoil heaps, and within sett entrance tunnels.



Images show badger prints in different substrate, claw marks are visible in very soft mud.

Images courtesy of Jo Bates-Keegan.

Fresh bedding (grass) near to an entrance.

Image courtesy of Steve Hawkes.



BEDDING

A badger's presence may be indicated by bedding materials such as discarded vegetation, dry or even green crops, straw or grass. Green material within the bedding would potentially indicate more recent activity and should be recorded. Signs of this around the entrance holes are valuable especially if these can be shown to be possibly recent and contain relatively fresh or green material and / or hairs.



Fresh bedding in a spoil heap.

Image courtesy of Craig Fellowes.

EVIDENCE CONTINUED...

PATHS

Well-used paths with pad marks indicate use by badgers. These paths are typically around 30cm across but vary depending on terrain and volume of use. Badgers are habitual and will use the same paths repeatedly.



Badger paths are typically most visible within a short distance of setts.

Images courtesy of Tris Pearce (top) and Craig Fellowes (bottom).

FRESH DIGGING

Evidence of digging and excavation and established spoil heaps around the sett and entrance holes.

Record remnants of vegetation or hairs present in excavated soil or bedding.



Evidence of fresh digging can take the form of obvious fresh spoil and seen here, furrows in spoil.

Image courtesy of Steve Hawkes.

FORAGING SIGNS

Marks or scrapes may not be found at a sett, but in a nearby field, these indicate that a badger has been foraging for food but are often confused with rabbit marks.

ELDER

Badgers consume elderberries as part of their diet as the fruit from the trees naturally hang near to the ground and are easily consumed by badgers. It is not uncommon to find elder established in and around badger setts, possibly due to seeds being deposited in latrines.



Examples of badger foraging.

Images courtesy of Jo Bates-Keegan

At least two of the listed signs of badger must be present (excluding the presence of elder) to prove a sett is displaying signs of current use, but record as many as possible.



Badger Facts

In the UK badgers live in groups of four to eight in underground 'setts' (a clan).

Badgers mate at almost any time of the year but, due to delayed implantation, only have one litter (usually born in early to mid-February) which will emerge above ground at around 12 weeks.

All badger clans have a home territory where they forage for food and they mark the boundaries with dung pits. Look for these along edges of fields, fence-lines, hedges, etc.

Badgers have poor eyesight but excellent hearing and sense of smell.

NOTES ON 'CURRENT USE'

S.14 of the Protection of Badgers Act 1992 says the term 'badger sett' means any structure or place which displays signs indicating current use by a badger, but the statute does not define the term 'current use'.

Independent definitions of 'current use' appear in guidance notes from the statutory nature conservation organisations, including 'Natural England' (See Appendix 2). The 'Natural England' definition unequivocally differentiates between current use and current occupation, namely that establishing the first is not dependent on the second. That is a helpfully wide definition as badgers are peripatetic and use several sites consecutively. The presence of field signs - even several weeks old - can therefore be enough to establish current use, according to 'Natural England'. However, the guidance issued by a licensing authority such as 'Natural England' defines only the extent of the licence being granted to carry on an activity which might interfere with a badger sett; it does not provide a legal definition of the terms used in the Protection of Badgers Act 1992.

In the DPP v Green (2001), the Divisional Court said that all five subparagraphs in section 3 of the Act throw light on what is meant by the statutory definition of a badger sett. The Court found that Parliament wished to make it clear that the terms of the Act were not to apply to tunnels or chambers constructed by badgers which were no longer in current use.

In the Appeal case of Hopkins & Allen v Regina (2011) it was held that if it is one sett (in that case a number of holes at the edge of a field and in a hedge) and any part shows signs of current use, then it is a sett in current use.

Whilst there have been a small number of cases in the Magistrates' Courts that have addressed the issue of 'current use', it is important to understand that judgments

in Magistrates' Court cases are never binding; similarly any Appeals from the Magistrates' Court to the Crown Court (whether by Defence or Crown) are also never binding. However, Investigative and Prosecution tactics may need amending in the light of constructive criticism so that evidence gathering, and Court presentation is improved.

In *McLintock v Harris & McLaughlan* (2010), the Sheriff held that 'displays' means visibly shows; 'signs' means more than one mark, symbol or indicator; 'indicating' means pointing to; 'current use' means the fact of being used at the present time. The sheriff also said that those signs have to be specific signs of 'current use', not local activity around the sett. This is an issue that has been raised time and again: some people lose sight of this when collecting evidence. To avoid problems in the future, it is advisable to get very good data on each hole in the sett, and make sure data on the field signs is collected to show that they relate specifically to the sett and not what could be just a passing badger. For example, badger latrines can be territory markers; unless they are connected by pathways to a sett entrance, they may have little evidential value in terms of proving 'current use'.

In the Appeal case of *Lee Martin v Regina* (2015) the court said that it is not necessary for the prosecution to prove that the accused was personally aware of the signs indicating current use by a badger. The judge said that is simply an objective decision to be made by the Court, based on the evidence it has heard of the presence (or otherwise) of signs indicating current use by a badger. The Court did not find any reason to suppose

that there has to be a further mental element of the accused being aware of the signs of current use.

The judge in the Martin case said that in his view it is not sufficient to prove that the sett was displaying those signs of use by a badger on days before or after the date of the alleged offence - there must be evidence of current use visible on the day in question. The judgment of the Court in that case was thought by some to mean that in future cases an expert must examine the sett on the day of the alleged offence, or the case will fail. That is not what was said. The judge said that the best evidence that could be given to that effect would be that of a badger expert who attended and examined the sett on the date of the alleged offence and had seen the signs himself.

The Court also said it would have been willing to hear evidence from the witnesses who were there on the day (who gave evidence at the original trial but, inexplicably, were not called in the appeal, though they were there waiting to be called). The Court did hear evidence from the expert of what he saw in video footage that was recorded by those witnesses on the day. The case failed because the expert was unable to say with certainty (because of the quality of the footage) that he could see signs of current use, but it is important to note that the expert's evidence was based upon the video footage he saw that had been taken by other witnesses on the day.

The judgment in Martin, whilst not binding, certainly serves as a reminder that potential signs indicating current use by a badger must be properly photographed (and corroborated as to

time, date and location by the use of a GPS device, if possible), such that they are clearly visible in the images and can be examined and considered by experts at a later date if necessary. Expert witnesses (for the Prosecution and the Defence) could then give evidence of what was shown in those images.

Expert evidence that cannot be replicated is open to challenge – for example, when a defence expert has not been able to examine a sett for days or weeks after a prosecution expert attended. Consequently, specialist recording of the scene at the sett may produce a large quantity of irrefutable video evidence which can then be disseminated equally between the prosecutor and defence teams, resulting in expert opinion formed from the same basic material. One example of good practice is for the investigating police officer or Crime Scene Investigator (CSI) to make a video recording of the signs of current use, as they are identified by the expert. There may, of course, be a need to facilitate the subsequent attendance at the scene of either or both experts, which would require consent of the landowner. If an expert cannot attend a location for some time, then all evidence must be recorded at the time of attendance. Ideally this should be in the presence and guidance of someone with knowledge and experience, so that maybe a member of your local badger group, or in fact could easily be a police officer with experience.

‘Current use’ is an objective test under the 1992 Act, so it should not be necessary to establish more than some of the signs for a prima facie case. The CPS has advised that any evidence recorded immediately before the offence

and immediately after it would provide good circumstantial evidence of the sett’s current use; however, the court would have to be directed to any ‘before and after’ signs of inhabitation and could then judge that there was current use in the intervening period. The CPS has also advised the use of mobile phone video in addition to a conventional camera. The mobile phone will have a different lens to the conventional camera and may well be better suited to close up shots or recording in restricted areas (in the entrances to the sett). Further, recording the scene with both cameras using differing angles, approaches and lighting will produce different emphasis on tracks and hair residue which will assist the prosecution’s expert to come to a more robust opinion.

A drone could be utilised to obtain a high-level video of the scene (subject to obtaining CAA permission for ‘aerial work’, see Article 166(5) and 241(6) of and Part B Schedule 13 to the Air Navigation Order 2009).

The video/photographic material must then be noted in an exhibiting statement that only includes the facts relating to the circumstances of the information leading to attending the sett and the recording of the video at the scene. Any ‘conclusions’ made by the witness would tend to stray into ‘expert’ opinion and so be liable to be excluded. The statement and the video material can then be served on the Defence solicitors as per S.9 of the Criminal Justice Act 1967, which means that the witness’ scene-recording evidence should be agreed and any dispute would be between the experts.



Shows crowning down hole marked by an expert witness before taking video footage.

Image courtesy of Jean Thorpe OBE.

INVESTIGATIVE PROCEDURE

If it cannot be established that a sett is in current use, no further investigation should take place under the Protection of Badgers Act. If, however, there is other evidence to show that, despite the lack of signs indicating current use, a badger was present, e.g. mobile phone/camera footage showing a badger at the location, evidence of injuries to dogs, other offences can be considered.

If the sett is displaying signs to indicate current use by a badger, then proceed with further investigation of the sett (section 3 of the PB Act) and digging offences (sections 1 and 2 of the PB Act).

ENSURE THAT YOU;

- » Seize all relevant exhibits, e.g., vehicles, spades, nets, firearms, knives and any other equipment.
- » Search and examine vehicles and other items for evidence associated with the offence, such as soil, badger hair and blood.
- » Seize the suspects' outer clothing, including footwear, at the police station for possible later forensic examination. This would be particularly significant where suspects are confronted/ detained away from the sett area and deny having been there.
- » Seize dead badgers forensically and take them for post-mortem examination. Dogs with old scars around the muzzle should be examined by a vet to determine if they are consistent with injuries caused by a badger.
- » Images stored on mobile phones often record relevant offences. Seize phones, cameras and computers, being mindful of RIPA requirements. Badger baiting offenders have a propensity to store images of their offending (and others) on electronic devices for sharing with associates.

Dogs

Deal with any dogs used as the first priority. If a dog is freshly injured, it needs to be examined and treated by a veterinary surgeon as soon as possible. Establish who is responsible for each dog and its name and determine whether the dog is receiving any treatment or medication that a vet should know about. Put these questions to suspects subsequent to their being cautioned – their answers may prove important in a later 'no comment' interview.

Photograph and video dogs and injuries as found. Keep dogs separate to avoid fighting and cross-contamination of evidence. Terriers may be fitted with transmitter collars – deal with these as evidence, including the soil on them.

Previous convictions with custodial sentences have been achieved using only the evidence from electronic devices found during house searches.

If a dog is freshly injured, it needs to be examined and treated by a veterinary surgeon as soon as possible.



Dead badger removed from a dug and then backfilled badger sett.

Image courtesy of Tris Pearce.

Veterinary Examination

The vet may not be familiar with the type of injuries dogs might sustain in badger incidents.

IN ADDITION TO THE USUAL VETERINARY EXAMINATION PROCEDURES YOU SHOULD:

- » photograph each fresh injury prior to treatment
- » record any other scarring or puncture marks with an estimate of the age of the scars
- » take swabs for DNA relating to either a specific dog or badger
- » record any loss or damage to teeth and the internal mouth structure
- » collect any hairs in the mouth for analysis
- » record any evidence of eye infections or other problems and recover any trace evidence e.g. mud from eyes
- » record the demeanour of the dog (they can often be subdued, dehydrated or in shock after the ordeal)
- » remove sample mud from the scene and retain it for comparison (see forensic checklist)
- » collect samples of faeces when next naturally passed and analyse these for the presence of badger hair
- » the animals may have badger hair or blood in their mouths or on their bodies. A Crime Scene Investigator should attend and recover samples
- » after initial treatment, consider having a specialist vet examine the dog, if it is considered beneficial

THE FOLLOWING SHOULD ALSO BE CONSIDERED:

- » Is there any evidence that a registered vet was not used, and injuries have been treated by the owner or unregistered vet?
- » Where a person is charged, dogs with untreated injuries should be kept for evidence and for possible re-homing (under section 13) on conviction. The RSPCA may be able to assist with the care of the dog after treatment.
- » If the owner of the dogs signs them over then there may be consideration to rehome immediately.

Advice & Guidance

Other Potential Evidence Sources

Snares that have been set but have not caught an animal may have traces of the DNA of the person who set them, provided they have not been exposed to particularly inclement weather.

Likewise a cage trap which has not yet caught an animal may also be a source of the DNA of the person who set it.

Ensure that samples are taken from the scene.

Image courtesy of Tris Pearce.



INVESTIGATIVE ASSISTANCE

Preventing and investigating offences relating to badgers are primarily matters for the police. They should always retain direction and management of cases when working with NGOs or local badger groups. Natural Resources Wales and Natural England officers are warranted to deal with suspected pesticide poisoning of badgers (including the gassing of badger setts). Sometimes it will be appropriate for investigations to be carried out using their powers, although the police will lead the investigation. The police are advised to seek assistance to deal with ecological aspects of investigations, however Natural England and Natural Resources Wales are able to provide advice and guidance to investigators, as is the National Wildlife Crime Unit.

Free advice can be obtained from local badger groups, the Badger Trust and Naturewatch Foundation.

In addition, free advice can be obtained from local badger groups and the Badger Trust, and Naturewatch Foundation.

If other experts are to be used, officers will need to establish the cost prior to engaging them. Officers should follow local force policy to obtain relevant approval.

Welfare Impact Statements

Prosecutions relating to badgers are not common and it is unlikely that magistrates will have much, if any, previous experience with such cases. To assist sentencing, a welfare impact statement will provide information about the welfare of any animal affected by the offending. This will accompany information on previous convictions and related articles that have appeared in the judicial press. A welfare impact statement can be prepared by a vet or a professional ecologist, depending on the case. Vets can give statements where they have treated injured badgers

or dogs, examined injuries, or carried out post-mortem examinations on dead badgers or dogs. They should be able to comment on the impact of injuries on the badger or dog's welfare. Vets and professional ecologists should also be able to comment on the impact of sett interference. For example, if the entrances to an active badger sett have been 'hard-stopped' or sealed so that badgers cannot exit the sett, this could lead to their asphyxiation underground.

Badgers are common in England and Wales and are not a conservation concern, therefore a conservation impact statement will not necessarily be appropriate. However, the impact on local community, badger group, wildlife trust or individual against the gravity and cruelty involved and state of devastation should be considered.

Licences

A Police Class Licence issued by NE enables named police officers and/or staff to carry out investigations in relation to wildlife crime without committing an offence under the PB Act. This applies in England. For licences in Wales, contact NRW. Further details of the licence and who can operate under it, can be obtained from local force wildlife crime SPOCs. Police forces should ensure they complete the annual returns, to ensure licences are renewed. Training should be considered as it is a requirement under the licence to ensure up to date training is given.

Officers may be asked whether activity that may have damaged or destroyed a badger sett can continue after forensic/ecological examination of the scene has been completed. Individuals should be advised to consult a professional ecological consultant. It is not the role of the police to stop lawful activity.

EXPERT WITNESS

The role of the expert witness in the prosecution is normally to establish beyond reasonable doubt to a court that a badger sett was interfered with, whilst being active and in current use, or that a person had wilfully killed, injured or taken, or attempted to kill, injure or take a badger.

The expert witness in badger-related cases will be a most important member of the prosecution or perhaps of the defence team.

The expert witness in badger-related cases will be a most important member of the prosecution or perhaps of the defence team. There are often two types of witnesses in court cases: firstly, one normally known as the lay witness giving evidence of 'fact' and secondly, the expert witness who can give evidence of 'opinion'. In a badger-related court case lay witnesses could state that on a certain date they

saw dogs and men digging at a certain place; this is 'fact evidence'. The expert witness may make a statement and give oral evidence that on a certain date he or she was taken to a certain place by a police officer/RSPCA Inspector. At this place he or she found that a digging had taken place, and in their 'opinion' it was an active badger sett in current use and interfered with by human digging, which had damaged the badger tunnel and chamber. This is 'opinion evidence'.

It is most important to remember that, whilst operating as an expert witness, the overriding duty is to the court, both in preparing a report or giving oral evidence.

In 1996 Lord Woolf (then Master of the Rolls) expressed some concerns over the position of expert witness in courts. Following this The Rules of Court (Amendment) Rules 2000 came into operation in January 2001 and a whole new order, Order 40A was also introduced. This made it very clear that the overriding duty of the expert witness was to the court.

The example of a declaration below reinforces this point:

Expert Witness Declaration:

I understand that my overriding duty is to the court, both in preparing this report and in giving oral evidence. I have complied with and will continue to comply with that duty.

I confirm that insofar as the facts are concerned in this report, I believe them to be true, and represent my true and complete professional opinion.

Signed



An expert witness should carefully map and label sett entrances as shown.

Images courtesy of Jean Thorpe OBE

This expertise may well be challenged in court in order to try to class them as being in fact an 'enthusiastic amateur' and the claim therefore that they are not suitable as an expert witness. As far back as R v Silverlock (1894) 2 QB 766 questions were asked of the expert witness: Is he peritus? Is he skilled? Has he adequate knowledge? Please remember that each court will decide if an expert witness is suitable and may be of assistance to it.

The expert witness must be familiar with what happens during the digging of a badger sett, the role of the terrier dogs, what equipment is used and how, and be knowledgeable and experienced in the biology of both badgers and foxes.

The expert will normally be contacted by the RSPCA, or by the police.

If they are asked to act as expert witness you must ascertain at an early stage when and if the expert is able to attend, also ascertain any costs involved. Please ensure that you meet the witness at the sett, and that it's definitely the same sett, ensure you have knowledge of the sett and have attended before.

EXPERT WITNESS CONTINUED...

IF AN EXPERT IS UNABLE TO ATTEND ON THE DAY, OR WITHIN 24HRS, THEN THE FOLLOWING QUESTIONS MUST BE ADDRESSED:

- » Can the level of evidence required be achieved without an expert attending?
- » Can an experienced person attend, to assist a 'Wildlife Crime Scene Recorder'?
- » Can the potential expert be supplied with suitable and quality evidence to enable them to make an informed decision without attending the scene?

It is important that continuity of evidence is maintained throughout the case. Very accurate map references, GPS locations or the use of apps like 'what three words' is extremely useful to ensure the correct location. The app is being already used by a number of police forces or being looked at and it's an easy to use and simple device.

Some police forces will use Crime Scene Investigators, and this is definitely good practice however, that is not always going to be possible. It is best that you accompany the expert at the scene, as there may be a need to corroborate the findings and statement.

It is best that you accompany the expert at the scene, as there may be a need to corroborate the findings and statement.

IDEALLY THE EXPERT SHOULD TAKE THE FOLLOWING ITEMS WITH THEM:

- » GPS device or mobile with GPS locator or app
- » tape measure
- » magnifying glass
- » evidence bags (Police to supply)
- » torch (for shining into entrance tunnels)
- » camera (not if CSI present)
- » notebook
- » some form of identifiable scale for your photographs (e.g. a wooden ruler)
- » scene markers (numbers) (CSI or police to supply)
- » gloves and face mask (police to supply)
- » Disposable suit may be required, not only to keep clothing clean, but to prevent contamination. The expert may be someone who works with badgers or rehabilitates them, and therefore have badger hair on their clothing. Changing before they come out to meet you is an option of course.

All photographs should be numbered when taken, so they can be easily referred to in court. You are also advised to take copies of the Protection of Badgers Act 1992 and the Wildlife and Countryside Act 1981. These may prove helpful if questions arise during the visit and reference is required. You show the expert where the incident occurred, even if they know where the sett is, and the precise spot where the diggers were seen or caught at the sett, including the specific entrance hole(s) where the terrier(s) was observed entering or emerging. Accuracy in this respect may prove important, particularly if the sett is a large one where there is evidence of a resident fox in part of the sett. Ensure the witness make notes at the time, or you record the whole visit on a suitable recording device. The CPS would prefer still and mobile images and have asked that both be taken showing the complete scene, as well as the approach and specifically any features which assist in identifying the location. Ensure the GPS location is recorded on film.

EXAMPLES OF WHAT MIGHT BE RECORDED BY THE EXPERT:

Hole 1 - This hole was semi-circular in shape and when measured was approximately 30cm wide and approximately 25cm" high. This entrance then turned into a tunnel of the same size which, when measured and examined with a torch, remained that size as far as I could see and did not taper. This hole had traces of bedding, old bracken stems and dried grass in the tunnel. Steam was seen to issue from this hole and was witnessed by PC _____. The entrance to the tunnel had been squared off by a spade, and spade marks were visible around the entrance. In my opinion, this hole was a badger sett entrance, was active and in current use and had received human interference. This was then numbered 1 (one) and photographed.

Hole 2 - This hole had a mound of freshly excavated soil outside it. Two badger guard hairs were found on the spoil heap. The hole had been stopped with spoil material dug with a spade from the spoil heap. Spade marks were clearly visible in the spoil heap, as were dog prints, a fresh cigarette stub and footprints made by a trainer-type shoe. In my opinion this hole was a badger sett entrance, was active and in current use and had received human interference. This was then numbered 2 (two) and photographed.

The note taking should be continued until the whole area has been recorded. Check for any dug trenches or shafts and measure them, including the depth. State if they connect with the badger tunnels underground. If the trench has been backfilled, look for vegetation not usually found on the surface, for example roots or bulbs. If there are many badger hairs on the backfilled earth this may show the trench entered a chamber used by badgers.

Each group/cluster of badger hairs should be placed in sealable bags, clearly labelled, and handed to the police officer/ RSPCA Inspector as evidence.

Fresh dung pits and scratching posts should be noted and photographed, but it should be stressed that these are only occasionally found close to the sett entrances. If badger prints are found, make sure to photograph them.

Note the presence or absence of any signs of foxes and where they are in relation to the badger signs. It is better to acknowledge the signs of fox rather than have the defence announce it to the court, making the prosecution appear to have been hiding the fact.

Consider drawing a sketch map of the sett area, showing the entrance holes and the location of relevant findings. When you have made all the notes, record the time you finished collecting the evidence and get the police officer to number and sign the bottom of each page of your notes. Return to the police station to hand in your bags of evidence and to make a statement from your notes. Make sure notes do not contain any erasures, blank spaces, blank pages, writing between the lines, overwriting or separate pieces of paper, otherwise questions may arise in court concerning the reliability of your notes.

EXPERT WITNESS
CONTINUED...

Photos and video are essential on your first visit. However, if for some reason during your visit no photographs were taken, then you need to arrange a further visit, preferably with a Scene of Crime Officer, so that photographic evidence can be submitted in court. You will need to point out to the officer what shots should be taken. Label the reverse of photos taken by yourself or a colleague with what each shows, when and where they were taken and sign each one.

As a follow-up, it may be useful to undertake a badger watch at the sett on several occasions shortly after the incident, in order to produce additional information on sightings of badgers. However, make sure you have permission to be on the land to carry out the watch.

IT IS WORTHWHILE CONSIDERING THE USE OF 'TRAIL CAMERAS' AT THIS POINT. HOWEVER, YOU NEED TO CONSIDER THE FOLLOWING

- » Is there permission to install them?
- » Are they being installed to solely record evidence of badgers?
- » Will the location of the camera be secure and out of reach of passers-by?

Consider using more than one camera, especially at a large established sett.

If there has been potential criminal activity around one particular entrance hole, then the badgers may stop using that hole and use other parts of the sett, that are not being recorded.

Lastly, consider what would be achieved by using the cameras. If you record nothing due to incorrect use of the equipment or lack of activity at that point this will be used by the defence. The footage, even if blank, is admissible and will be handed to the defence.

If a snare is found the expert witness may be asked if, in their opinion, this snare has been set in a calculated manner to cause injury to the badger. Gather evidence, such as whether the snare was placed on an active badger sett or across a badger path, and proof of badger hairs in the vicinity.

Photos and video are essential on your first visit. However, if for some reason during your visit no photographs were taken, then you need to arrange a further visit, preferably with a Scene of Crime Officer, so that photographic evidence can be submitted in court.

FURTHER TRAINING

Badger persecution persists in many forms across England and Wales. With the current level of protection under the law and by supporting police forces we can work together to help combat crime against badgers. The Badger Trust currently offers a one-day Police Badger Persecution Awareness Courses to help support police forces across England and Wales.

This document acts as a guide, if you are interested in receiving the Police Badger Persecution Awareness Training or receiving additional advice please contact the Badger Trust directly at crime@badgertrust.org.uk.



Police officers attending Badger Trust training.

Useful Organisations

The Badger Trust have a wealth of information about badgers and the location of badger setts. Their knowledge may also be vital in proving current use by badgers of a sett. Alongside the trust there are a number of badger groups covering large areas of England & Wales and they can be an extremely useful resource and partner, with local knowledge, a wealth of experience, records of setts and expert advice.

The Badger Trust delivers training to the

police and interested parties, along with Badger Groups. The course is free to the police. www.badgertrust.org.uk

Naturewatch Foundation Badger

Baiting campaign includes vital coalition work with partner agencies to combat persecution, conducting covert investigations and a school awareness programme designed for teenagers to raise awareness of persecution. Expert advice is also available.

www.naturewatch.org

The RSPCA are expert in animal handling and will assist with injured badgers or trapped dogs. They may also investigate a case in their own right. www.rspca.org.uk

Natural England/The Countryside

Council for Wales have experts on badgers who would be willing to assist. They can also provide information and advice on licensing matters.

www.gov.uk/government/organisations/natural-england

www.naturalresources.wales

The main role of the **UK National Wildlife Crime Unit (NWCU)** is to assist in the prevention and detection of wildlife crime. They carry out this role by obtaining and disseminating information from a wide range of organisations and assisting police forces in wildlife crime investigation. They also produce analysis highlighting local or national trends. The NWCU also acts as a conduit between police forces and PAW partners.

www.nwcu.police.uk

The PAW Forensics Working

Group (FWG) was established in 1996. Its membership is made up of representatives from the forensic science community, government departments, the Police, UK Border Force and non-governmental organisations. The FWG aims to support the application of scientific technologies to countering wildlife crime in the UK. It keeps abreast of developments in wildlife forensics and works to provide tools for wildlife law enforcers. www.tracenetwork.org

Operation Badger
is a UK wide operation,
gathering intelligence
to identify and
prosecute offenders.



TERMS

Badger Baiting: an illegal fight in which dogs are pitched against badgers dug from their setts.

Badger Digging: method employed using dogs and spades to assist the removal of a badger from its sett.

Sett: the home or residence of badgers

Earthdog: a dog that will dig in the earth, or enter holes of foxes and badgers etc. Usually a short-legged terrier, also known as a working terrier, a small type of dog which pursues its quarry into the earth.

Running Dog: a dog that works above ground and runs or pursues its quarry.

Long dog: A longdog is a crossbreed between two sighthounds. The longdog is an attempt to create a better coursing dog and is not expected to have the working qualities of a good Lurcher, although a few come close.

Slip lead: A slip lead looks like a regular flat leash, except it has a metal ring on one end instead of a clip. You pass the handle end of the leash through the metal ring to form a loop. A slip lead allows you to walk your dog on leash when he's not wearing his collar.

Roll or Rollin: usually associated with dog fighting, a practice session, training session.

Gameness: tenacity and a willingness to fight.

Champion: used in dog fighting to refer to a dog that has won three fights.

Convention: a term usually associated with dog fighting but has been associated with organised fighting and baiting. An event where fighting and baiting takes place accompanied by music and food.

Pig: Slang term for Badger

Billy: Slang term for Badger

Brock: Slang term for Badger

Ground hog: Slang term for Badger, or the welsh name for a badger or earth pig. 'Moch daear'

Tug a pig: a term found on social media which refers to the above ground activity of a tug of war, between dogs, where there is no rope, just a badger.

Pig in pipe: term used to describe a badger in a tunnel.

Break Stick: a wedge-shaped stick used to 'break' the hold of badgers and dogs by opening the jaws.

Main Setts*: These usually have a large number of holes with large spoil heaps, and the sett generally looks well used. They usually have well-used paths to and from the sett and between sett entrances. Although normally the breeding sett is in continual use, it is possible to find a main sett that has become disused because of excessive digging or for some other reason, in which case it is recorded as a disused main sett.

Annex Setts*: These are always close to a main sett, usually less than 150 m away, and are usually connected to the main sett by one or more obvious, well-worn paths. They consist of several holes, but are not necessarily in use all the time, even if the main sett is very active.

Subsidiary Setts*: These often have only a few holes, are usually at least 50m from a main sett and do not have an obvious path connecting them with another sett. They are not continuously active.

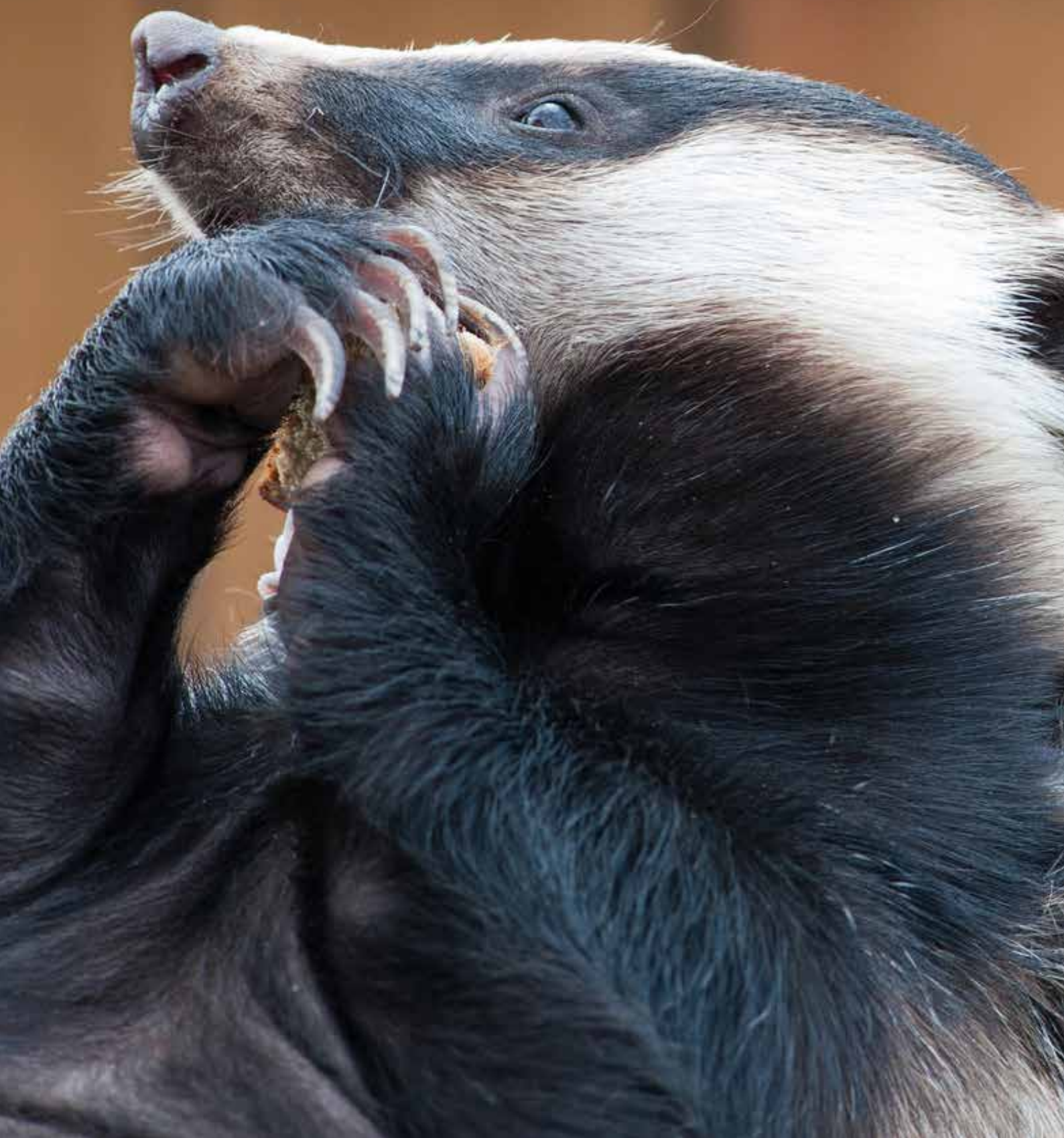
Outlying Setts*: These usually only have one or two holes, often have little spoil outside the hole, have no obvious path connecting them with another sett, and are only used sporadically. When not in use by badgers, they are often taken over by foxes or even rabbits. However, they can still be recognised as badger setts by the shape of the tunnel (not the entrance hole), which is at least 250-300mm wide at the base with a rounded or flattened oval roof (roughly 200mm high).

Latrine: a shallow hole or scrape which a badger will use as a dung pit. Potentially used for scent marking a territory.

Snuffle hole: a shallow scrape created by a badger to forage for worms and grubs.

**NB. The law recognises any of these types as badger setts.*

APPENDICES



APPENDIX 1: LEGISLATION

Protection of Badgers Act 1992

S1. TAKING, INJURING OR KILLING BADGERS.

- (1) A person is guilty of an offence if, except as permitted by or under this Act, he wilfully kills, injures or takes, or attempts to kill, injure or take a badger.
- (2) If in any proceedings for an offence under subsection (1) above consisting of attempting to kill, injure or take a badger, there is evidence from which it could reasonably be concluded that at the material time the accused was attempting to kill, injure or take a badger, he shall be presumed to have been attempting to kill, injure or take a badger unless the contrary is shown.
- (3) A person is guilty of an offence if, except as permitted by or under this Act, he has in his possession or under his control any dead badger or any part of, or anything derived from, a dead badger.
- (4) A person is not guilty of an offence under subsection (3) above if he shows that—
 - (a) the badger had not been killed, or had been killed otherwise than in contravention of the provisions of this Act or of the Badgers Act 1973; or
 - (b) the badger or other thing in his possession or control had been sold (whether to him or any other person) and, at the time of the purchase, the purchaser had had no reason to believe that the badger had been killed in contravention of any of those provisions.
- (5) If a person is found committing an offence under this section on any land it shall be lawful for the owner or occupier of the land, or any servant of the owner or occupier, or any constable, to require that person forthwith to quit the land and also to give his name and address; and if that person on being so required wilfully remains on the land or refuses to give his full name or address he is guilty of an offence.

S2. CRUELTY

- (1) A person is guilty of an offence if—
 - (a) he cruelly ill-treats a badger;
 - (b) he uses any badger tongs in the course of killing or taking, or attempting to kill or take, a badger;
 - (c) except as permitted by or under this Act, he digs for a badger; or
 - (d) he uses for the purpose of killing or taking a badger any firearm other than a smooth bore weapon of not less than 20 bore or a rifle using ammunition having a muzzle energy not less than 160 foot-pounds and a bullet weighing not less than 38 grains.
- (2) If in any proceedings for an offence under subsection 1(c) above there is evidence from which it could reasonably be concluded that at the material time the accused was digging for a badger he shall be presumed to have been digging for a badger unless the contrary is shown.

S3. INTERFERING WITH BADGER SETTS

- (1) A person is guilty of an offence if, except as permitted by or under this Act, he interferes with a badger sett by doing any of the following things—
 - (a) damaging a badger sett or any part of it;
 - (b) destroying a badger sett;
 - (c) obstructing access to, or any entrance of, a badger sett;
 - (d) causing a dog to enter a badger sett; or
 - (e) disturbing a badger when it is occupying a badger sett, intending to do any of those things or being reckless as to whether his actions would have any of those consequences.

S4. SELLING AND POSSESSION OF LIVE BADGERS

- (1) A person is guilty of an offence if, except as permitted by or under this Act, he sells a live badger or offers one for sale or has a live badger in his possession or under his control.

S5. MARKING AND RINGING

A person is guilty of an offence if, except as authorised by a licence under section 10 below, he marks, or attaches any ring, tag or other marking device to a badger other than one which is lawfully in his possession by virtue of such a licence.

S6. GENERAL EXCEPTIONS

A PERSON IS NOT GUILTY OF AN OFFENCE UNDER THIS ACT BY REASON ONLY OF—

- (a) taking or attempting to take a badger which has been disabled otherwise than by his act and is taken or to be taken solely for the purpose of tending it.
- (b) killing or attempting to kill a badger which appears to be so seriously injured or in such a condition that to kill it would be an act of mercy or has been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of it recovering.
- (c) unavoidably killing or injuring a badger as an incidental result of a lawful action;
- (d) doing anything which is authorised under the Animals (Scientific Procedures) Act 1986.

S7. EXCEPTIONS FROM S.1

- (1) Subject to subsection (2) below, a person is not guilty of an offence under section 1(1) above by reason of—
 - (a) killing or taking, or attempting to kill or take, a badger; or
 - (b) injuring a badger in the course of taking it or attempting to kill or take it, if he shows that his action was necessary for the purpose of preventing serious damage to land, crops, poultry or any other form of property.
- (2) The defence provided by subsection (1) above does not apply in relation to any action taken at any time if it had become apparent, before that time, that the action would prove necessary for the purpose there mentioned and either:
 - (a) a licence under section 10 below authorising that action had not been applied for as soon as reasonably practicable after that fact had become apparent; or
 - (b) an application for such a licence had been determined.

S8. EXCEPTIONS FROM S.3

- (1) Subject to subsection (2) below, a person is not guilty of an offence under section 3 (1) or (2) above if he shows that his action was necessary for the purpose of preventing serious damage to land, crops, poultry or any other form of property.
- (2) Subsection (2) of section 7 above applies to the defence in subsection (1) above as it applies to the defence in subsection (1) of that section.
- (3) A person is not guilty of an offence under section 3(a) (1)(a), (c) or (e) above or an offence under section 3(2) above relating to an offence under section 3(1)(a), to (c) or (e) above if he shows

that his action was the incidental result of a lawful operation and could not reasonably have been avoided.

(4) to (9) Repealed by the Hunting Act.

S9. EXCEPTIONS FROM S.4

A PERSON IS NOT GUILTY OF AN OFFENCE UNDER SECTION 4 ABOVE BY REASON OF HAVING A LIVE BADGER IN HIS POSSESSION OR UNDER HIS CONTROL IF—

- (a) it is in his possession or under his control, as the case may be, in the course of his business as a carrier; or
- (b) it has been disabled otherwise than by his act and taken by him solely for the purpose of tending it and it is necessary for that purpose for it to remain in his possession or under his control, as the case may be.

S10. LICENCES

- (1) A licence may be granted to any person by the appropriate Conservancy Council authorising him, notwithstanding anything in the foregoing provisions of this Act, but subject to compliance with any conditions specified in the licence—
 - (a) for scientific or educational purposes or for the conservation of badgers—
 - (i) to kill or take, within an area specified in the licence by any means so specified, or to sell, or to have in his possession, any number of badgers so specified; or
 - (ii) to interfere with any badger sett within an area specified in the licence by any means so specified;
 - (b) for the purpose of any zoological gardens or collection specified in the licence, to take within an area specified in the licence by any means so specified, or to sell, or to have in his possession, any number of badgers so specified;

- (c) for the purpose of ringing and marking, to take badgers within an area specified in the licence, to mark such badgers or to attach to them any ring, tag or other marking device as specified in the licence;
- (d) for the purpose of any development as defined in section 55(1) of the Town and Country Planning Act 1990.
- (e) for the purpose of the preservation, or archaeological investigation, of a monument scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979, to interfere with a badger sett within an area specified in the licence by any means so specified;
- (f) for the purpose of investigating whether any offence has been committed or gathering evidence in connection with proceedings before any court, to interfere with a badger sett within an area specified in the licence by any means so specified.
- (g) for the purpose of preventing the spread of disease, to kill or take badgers, or to interfere with a badger sett, within an area specified in the licence by any means so specified;
- (h) for the purpose of preventing serious damage to land, crops, poultry or any other form of property, to kill or take badgers, or to interfere with a badger sett, within an area specified in the licence by any means so specified;
- (i) for the purpose of any agricultural or forestry operation, to interfere with a badger sett within an area specified in the licence by any means so specified;
- (j) for the purpose of any operation (whether by virtue of the Land Drainage Act 1991 or otherwise) to maintain or improve any existing watercourse or drainage works, or to construct new works required for the drainage of any land, including works for the purpose of defence against sea water or tidal water, to interfere with a

badger sett within an area specified in the licence by any means so specified.

- (k) to interfere with a badger sett within an area specified in the licence by any means so specified for the purpose of controlling foxes in order to protect livestock, game or wildlife.

A licence may be granted to any person by the appropriate Minister authorising him, notwithstanding anything in the foregoing provisions of this Act, but subject to compliance with any conditions specified in the licence

- (3) A licence may be granted to any person either by the appropriate conservation body or the appropriate Minister authorising that person, notwithstanding anything in the foregoing provisions of this Act, but subject to compliance with any conditions specified in the licence,
- (4) In this section “the appropriate conservation body” means, in relation to a licence for an area—
- (a) in England, Natural England;
- (b) in Wales, the Natural Resources Body for Wales; and
- (c) in Scotland, Scottish Natural Heritage
- (5) In this section “the appropriate Minister” means in relation to a licence for an area—
- (a) in England, the Secretary of State; and
- (b) in Wales or in Scotland, the Secretary of State.
- (6) The appropriate Minister shall from time to time consult with the appropriate conservation body as to the exercise of his functions under subsection (2)(b), (c) or (d) above and shall not grant a licence of any description unless he has been advised by the appropriate conservation body as to the circumstances in which, in that body's opinion, licences of that description should be granted. The Scottish

Ministers must consult Scottish Natural Heritage before granting a licence under subsection (1) above.

- (7) In relation to Scottish Natural Heritage subsection (6) above shall have effect with the omission of the reference to subsection (2)(c) and (d).
- (8) A licence granted under this section may be revoked at any time by the authority by whom it was granted, and without prejudice to any other liability to a penalty which he may have incurred under this or any other Act, a person who contravenes or fails to comply with any condition imposed on the grant of a licence under this section is guilty of an offence.
- (9) A licence under this section shall not be unreasonably withheld or revoked.

S11. POWERS OF CONSTABLES

Where a constable has reasonable grounds for suspecting that a person is committing an offence under the foregoing provisions of this Act, or has committed an offence under those provisions or those of the Badgers Act 1973 and that evidence of the commission of the offence is to be found on that person or any vehicle or article he may have with him, the constable may—

- (a) without warrant stop and search that person and any vehicle or article he may have with him;
- (b) seize and detain for the purposes of proceedings under any of those provisions anything which may be evidence of the commission of the offence or may be liable to be forfeited under section 12(4) below;

NB. There are no powers under the Protection of Badgers Act to enter the land without a warrant. However, the Natural Environment & Rural Communities Act 2006 under Schedule 5 Part 4 amended the Wildlife & Countryside Act 1981 to allow a power to obtain a warrant.

PART 4 OF THE NATURAL ENVIRONMENT & RURAL COMMUNITIES ACT STATES:

Constable's search warrant power extended to certain other Acts

13 (1) Section 19(3) of the 1981 Act (issue of search warrants for purpose of obtaining evidence of offence) applies in relation to an offence under each of the Acts mentioned in sub-paragraph (2) as it applies in relation to an offence under Part 1 of the 1981 Act.

(2) The Acts are:

- (a) The Destructive Imported Animals Act 1932 (c.12);
- (b) The Conservation of Seals Act 1970 (c.30);
- (c) The Deer Act 1991 (c.54);
- (d) The Protection of Badgers Act 1992 (c.51).

The Natural Environment and Rural Communities Act 2006 under Schedule 11, para 76(3)(5), also amended Part 1, section 27(1) (F14) of the Wildlife and Countryside Act in relation to the meaning of premises. The definition of premises was amended to include “land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport”. Therefore, a search warrant can be obtained for a specific area of land as well as private Dwellings and other locations as listed above.

Wildlife & Countryside Act 1981

Badgers are included in Schedule 6 and therefore afforded the protections listed below. Please ensure you refer to the full Act and, where appropriate, the amendments.

S11. PROHIBITION OF CERTAIN METHODS OF KILLING OR TAKING WILD ANIMALS

- (1) Subject to the provisions of this Part, if any person—
- (a) sets in position any self-locking snare which is of such a nature and so placed as to be calculated to cause bodily injury to any wild animal coming into contact therewith;
- (b) uses for the purpose of killing or taking any wild animal any self-locking snare, whether or not of such a nature or so placed as aforesaid, any bow or crossbow or any explosive other than ammunition for a firearm;
- (c) uses as a decoy, for the purpose of killing or taking any wild animal, any live mammal or bird whatever, or
- (d) knowingly causes or permits to be done an act which is mentioned in the foregoing provisions of this section, he shall be guilty of an offence.
- (2) Subject to the provisions of this Part, if any person—
- (a) sets in position any of the following articles, being an article which is of such a nature and so placed as to be calculated to cause bodily injury to any wild animal included in Schedule 6 which comes into contact therewith, that is to say, any trap or snare, any electrical device for killing or stunning or any poisonous, poisoned or stupefying substance;
- (b) uses for the purpose of killing or taking any such wild animal any such article as aforesaid, whether or not of such a nature and so placed as aforesaid, or any net;
- (c) uses for the purpose of killing or taking any such wild animal—
- (i) any automatic or semi-automatic weapon;
- (ii) any device for illuminating a target or sighting device for night shooting;
- (iii) any form of artificial light or any mirror or other dazzling device; or
- (iv) any gas or smoke not falling within paragraphs (a) and (b);
- (d) uses as a decoy, for the purpose of killing or taking any such wild animal, any sound recording;
- (e) uses any mechanically propelled vehicle in immediate pursuit of any such wild animal for the purpose of driving, killing or taking that animal,
- (f) knowingly causes or permits to be done an act which is mentioned in the foregoing provisions of this subsection, he shall be guilty of an offence.
- (3) Subject to the provisions of this Part, if any person—
- (a) sets in position or knowingly causes or permits to be set in position any snare which is of such a nature and so placed as to be calculated to cause bodily injury to any wild animal coming into contact therewith; and
- (b) whilst the snare remains in position fails, without reasonable excuse, to inspect it, or cause it to be inspected, at least once every day, he shall be guilty of an offence.
- (4) The Secretary of State may, for the purpose of complying with an international obligation, by order, either generally or in relation to any kind of wild animal specified in the order, amend subsection (1) or (2) by adding any method of killing or taking wild animals or by omitting any such method as is mentioned in that subsection.
- (5) In any proceedings for an offence under subsection (1)(b) or (c) or (2)(b), (c), (d) or (e), and in any proceedings for an offence under subsection (1) (d) or (2) (f) relating to an act which is mentioned in any of those paragraphs the animal in question shall be presumed to have been a wild animal unless the contrary is shown.
- (6) In any proceedings for an offence under subsection (2)(a) it shall be a defence to show that the article was set in position by the accused for the purpose of killing or taking, in the interests of public health, agriculture, forestry, fisheries or nature conservation, any wild animals which could be lawfully killed or taken by those means and that he took all reasonable precautions to prevent injury thereby to any wild animals included in Schedule 6.
- (7) In any proceedings for an offence under subsection (2)(f) relating to an act which is mentioned in subsection (2)(a) it shall be a defence to show that the article was set in position for the purpose of killing or taking, in the interests of public health, agriculture, forestry, fisheries or nature conservation, any wild animals which could be lawfully killed or taken by those means and that he took or caused to be taken all reasonable precautions to prevent injury thereby to any wild animals included in Schedule 6.

POWERS

SECTION 19

- (1) If a constable suspects with reasonable cause that any person is committing or has committed an offence under this Part, the constable may without warrant—
- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
- (b) search or examine anything which that person may then be using or have

in his possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that thing;

- (c) (repealed)
- (d) seize and detain for the purposes of proceedings under this Part anything which may be evidence of the commission of the offence or may be liable to be forfeited under section 21.
- (2) If a constable suspects with reasonable cause that any person is committing or has committed an offence under this Part, he may, for the purpose of exercising the powers conferred by subsection (1) or arresting a person, in accordance with section 24 of Police and Criminal Evidence Act 1984, for such an offence, enter any premises other than a dwelling.
- (2A) A constable may, for the purpose of assisting him in exercising the powers conferred by subsection (1)(b) and (d) when he has entered any premises under subsection (2), take with him:
- (a) any other person, and
- (b) any equipment or materials.
- (3) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that an offence under this Part has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable to enter upon and search those premises for the purpose of obtaining that evidence.

S12. PENALTIES AND FORFEITURE

- (1) A person guilty of an offence under section 1(1) or (3), 2 or 3 above is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both; and a person guilty

of an offence under section 4, 5 or 10(8) above or 13(7) below is liable on summary conviction to a fine not exceeding that level.

- (2) Where an offence was committed in respect of more than one badger the maximum fine which may be imposed under subsection (1) above shall be determined as if the person convicted had been convicted of a separate offence in respect of each badger.
- (3) A person guilty of an offence under section 1(5) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) The court by which a person is convicted of an offence under this Act shall order the forfeiture of any badger or badger skin in respect of which the offence was committed and may, if they think fit, order the forfeiture of any weapon or article in respect of or by means of which the offence was committed.

12 Z. A time limit for bringing summary proceedings (England and Wales)

- (1) Proceedings in England and Wales for a summary offence under this Act may be brought within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.
- (2) But subsection (1) does not authorise the commencement of proceedings for an offence more than 2 years after the date on which the offence was committed.
- (3) For the purposes of this section, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.
- (4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

13. POWERS OF COURT WHERE DOG USED OR PRESENT AT COMMISSION OF OFFENCE

- (1) Where a dog has been used in or was present at the commission of an offence under sections 1(1), 2 or 3 above, the court, on convicting the offender, may, in addition to or in substitution for any other punishment, make either or both of the following orders—
- (a) an order for the destruction or other disposal of the dog;
- (b) an order disqualifying the offender, for such period as it thinks fit, for having custody of a dog.
- (2) Where the court makes an order under subsection (1)(a) above, it may—
- (a) appoint a person to undertake the destruction or other disposal of the dog and require any person having custody of the dog to deliver it up for that purpose; and
- (b) order the offender to pay such sum as the court may determine to be the reasonable expenses of destroying or otherwise disposing of the dog and of keeping it pending its destruction or disposal.
- (3) Where an order under subsection (1) (a) above is made in relation to a dog owned by a person other than the offender, the owner of the dog may appeal to the Crown Court against the order.
- (4) A dog shall not be destroyed pursuant to an order under subsection (1)(a) above—
- (a) until the end of the period within which notice of appeal to the Crown Court against the order can be given; and
- (b) if notice of appeal is given in that period, until the appeal is determined or withdrawn, unless the owner of the dog gives notice to the court which made the order that he does not

WILDLIFE & COUNTRYSIDE ACT 1981 CONTINUED...

- intend to appeal against it.
- (5) A person who is disqualified for having custody of a dog by virtue of an order made under subsection (1)(b) above may, at any time after the end of the period of one year beginning with the date of the order, apply to the court that made it (or any Magistrates' Court acting in the same local justice area) for a direction terminating the disqualification.
- (6) On an application under subsection (5) above the court may—
- (a) having regard to the applicant's character, his conduct since the disqualification was imposed and any other circumstances of the case, grant or refuse the application; and
- (b) order the applicant to pay all or any part of the costs of the application; and where an application in respect of an order is refused no further application in respect of that order shall be entertained if made before the end of the period of one year beginning with the date of the refusal.
- (7) Any person who—
- (a) has custody of a dog in contravention of an order under subsection (1)(b) above; or
- (b) fails to comply with a requirement imposed on him under subsection (2) (a) above, is guilty of an offence.
- (8) A sum ordered to be paid by an order under subsection (2)(b) above shall be recoverable summarily as a civil debt.
- (9) In the application of this section to Scotland—
- (a) in subsection (3), for the words "Crown Court against the order" there shall be substituted the words "High Court of Justiciary against the order within the period of seven days beginning with the date of the order";

- (b) for subsection (4)(a) there shall be substituted—
- "(a) until the end of the period of seven days beginning with the date of the order"; and
- (c) in subsection (5), the words "(or any Magistrates' Court acting in the same local justice area as that court)" shall be omitted.

S14. INTERPRETATION.

- In this Act—
- "ammunition" has the same meaning as in the Firearms Act 1968;
- "badger" means any animal of the species *Meles meles*;
- "badger sett" means any structure or place which displays signs indicating current use by a badger;
- "firearm" has the same meaning as in the Firearms Act 1968;
- "sale" includes hire, barter and exchange and cognate expressions shall be construed accordingly.

WILD MAMMALS (PROTECTION) ACT 1996

If, save as permitted by this Act, any person mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates any wild mammal with intent to inflict unnecessary suffering he shall be guilty of an offence.

Exceptions from offence under the Act

A PERSON SHALL NOT BE GUILTY OF AN OFFENCE UNDER THIS ACT BY REASON OF:

- the attempted killing of any such wild mammal as an act of mercy if he shows that the mammal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering;
- (b) the killing in a reasonably swift and humane manner of any such wild mammal if he shows that the wild mammal had been injured or taken in the course of either lawful shooting, hunting, coursing or lawful pest control activity;
- (c) doing anything which is authorised by or under any enactment;
- (d) any act made unlawful by section 1 if the act was done by means of any snare, trap, dog, or bird lawfully used for the purpose of killing or taking any wild mammal; or
- (e) the lawful use of any poisonous or noxious substance on any wild mammal.

INTERPRETATION

In this Act “wild mammal” means any mammal which is not a “protected animal” within the meaning of the Animal Welfare Act 2006.

S4. POWERS OF CONSTABLES

Where a constable has reasonable grounds for suspecting that a person has committed an offence under the provisions of this Act and that evidence of the commission of the offence may be found on that person or in or on any vehicle he may have with him, the constable may—

- (a) without warrant, stop and search that person and any vehicle or article he may have with him; and
- (b) seize and detain for the purposes of proceedings under any of those provisions anything which may be evidence of the commission of the offence or may be liable to be confiscated under section 6 of this Act.

S5. PENALTIES

- (1) A person guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding six months, or both.
- (2) Provided that where the offence was committed in respect of more than one wild mammal, the maximum fine which may be imposed shall be determined as if the person had been convicted of a separate offence in respect of each such wild mammal.

COURT POWERS OF CONFISCATION

- (1) The court before whom any person is convicted under this Act may, in addition to any other punishment, order the confiscation of any vehicle or equipment used in the commission of the offence.
- (2) The Secretary of State may, by regulations made by statutory instrument and subject to annulment in pursuance of a resolution of either House of Parliament, make provision for the disposal or destruction in prescribed circumstances of any vehicle or equipment confiscated under this section.

Hunting Act 2004

S1. HUNTING WILD MAMMALS WITH DOGS

A person commits an offence if he hunts a wild mammal with a dog, unless his hunting is exempt.

S8. SEARCH AND SEIZURE

- (1) This section applies where a constable reasonably suspects that a person ("the suspect") is committing or has committed an offence under Part 1 of this Act.
- (2) If the constable reasonably believes that evidence of the offence is likely to be found on the suspect, the constable may stop the suspect and search him.
- (3) If the constable reasonably believes that evidence of the offence is likely to be found on or in a vehicle, animal or other thing of which the suspect appears to be in possession or control, the constable may stop and search the vehicle, animal or other thing.
- (4) A constable may seize and detain a vehicle, animal or other thing if he reasonably believes that—
 - (a) it may be used as evidence in criminal proceedings for an offence under Part 1 of this Act, or
 - (b) it may be made the subject of an order under section 9.
- (5) For the purposes of exercising a power under this section a constable may enter—
 - (a) land;
 - (b) premises other than a dwelling;
 - (c) a vehicle.
- (6) The exercise of a power under this section does not require a warrant.

S11. INTERPRETATION

- (1) In this Act "wild mammal" includes, in particular—
 - (a) a wild mammal which has been bred or tamed for any purpose,
 - (b) a wild mammal which is in captivity or confinement,
 - (c) a wild mammal which has escaped or been released from captivity or confinement, and
 - (d) any mammal which is living wild.
- (2) For the purposes of this Act a reference to a person hunting a wild mammal with a dog includes, in particular, any case where—
 - (a) a person engages or participates in the pursuit of a wild mammal, and
 - (b) one or more dogs are employed in that pursuit (whether or not by him and whether or not under his control or direction).
- (3) For the purposes of this Act land belongs to a person if he—
 - (a) owns an interest in it,
 - (b) manages or controls it, or
 - (c) occupies it.
- (4) For the purposes of this Act a dog belongs to a person if he—
 - (a) owns it,
 - (b) is in charge of it, or
 - (c) has control of it.

Schedule 1 under this Act lists Exempt Hunting and you should be aware of all exemptions, however in relation to badgers you are more likely to come across what some will claim is 'exempt hunting'.

USE OF DOGS BELOW GROUND TO PROTECT BIRDS FOR SHOOTING

- (1) The use of a dog below ground in the course of stalking or flushing out is in accordance with this paragraph if the conditions in this paragraph are satisfied.
- (2) The first condition is that the stalking or flushing out is undertaken for the purpose of preventing or reducing serious damage to game birds or wild birds (within the meaning of section 27 of the Wildlife and Countryside Act 1981 (c.69) which a person is keeping or preserving for the purpose of their being shot.
- (3) The second condition is that the person doing the stalking or flushing out:
 - (a) has with him written evidence—
 - (i) that the land on which the stalking or flushing out takes place belongs to him, or
 - (ii) that he has been given permission to use that land for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs, and makes the evidence immediately available for inspection by a constable who asks to see it.
- (4) The third condition is that the stalking or flushing out does not involve the use of more than one dog below ground at any one time.
- (5) In so far as stalking or flushing out is undertaken with the use of a dog below ground in accordance with this paragraph, paragraph 1 shall have effect as if for the condition in paragraph 1(7) there were substituted the condition that:
 - » reasonable steps are taken for the purpose of ensuring that as soon as possible after being flushed out from below ground the wild mammal is shot dead by a competent person,
 - » in particular, the dog is brought under sufficiently close control

to ensure that it does not prevent or obstruct achievement of the objective in paragraph (b),
 » reasonable steps are taken for the purpose of preventing injury to the dog, and the manner in which the dog is used complies with any code of practice which is issued or approved for the purpose of this paragraph by the Secretary of State.

S9 FORFEITURE

(1) A court which convicts a person of an offence under Part 1 of this Act may order the forfeiture of any dog or hunting article which—

(a) was used in the commission of the offence, or

(b) was in the possession of the person convicted at the time of his arrest.

(2) A court which convicts a person of an offence under Part 1 of this Act may order the forfeiture of any vehicle which was used in the commission of the offence.

(3) In subsection (1) “hunting article” means anything designed or adapted for use in connection with—

(a) hunting a wild mammal, or

(b) hare coursing.

(4) A forfeiture order—

(a) may include such provision about the treatment of the dog, vehicle or article forfeited as the court thinks appropriate, and

(b) subject to provision made under paragraph (a), shall be treated as requiring any person who is in possession of the dog, vehicle or article to surrender it to a constable as soon as is reasonably practicable.

(5) Where a forfeited dog, vehicle or article is retained by or surrendered to a constable, the police force of which the constable is a member shall ensure that such arrangements are

made for its destruction or disposal—

(a) as are specified in the forfeiture order, or

(b) where no arrangements are specified in the order, as seem to the police force to be appropriate.

(6) The court which makes a forfeiture order may order the return of the forfeited dog, vehicle or article on an application made—

(a) by a person who claims to have an interest in the dog, vehicle or article (other than the person on whose conviction the order was made), and

(b) before the dog, vehicle or article has been destroyed or finally disposed of under subsection (5).

(7) A person commits an offence if he fails to—

(a) comply with a forfeiture order, or

(b) co-operate with a step taken for the purpose of giving effect to a forfeiture order.

APPENDIX 2: GUIDANCE ON CURRENT USE FROM STATUTORY LICENSING BODIES

Protection of Badgers Act 1992

Natural England Guidance on 'Current Use'

GUIDANCE ON 'CURRENT USE' IN THE DEFINITION OF A BADGER SETT

LEGAL PROTECTION FOR BADGER SETTS

Protection for badger setts, rather than badgers themselves, was established by the Badgers Act 1991. This Act was the first to provide a definition of a badger sett which was carried over into the consolidating Act – the Protection of Badgers Act 1992 which defines a sett as: “any structure or place which displays signs indicating current use by a badger”.

There is much debate about how the term “current use” should be interpreted. This guidance sets out the view that Natural England takes regarding its licensing powers under section 10 of the Act. This is provided for guidance and legal advice should be sought, where appropriate, in individual cases.

WHAT COULD BE A SETT?

Although the definition of a sett in the Act can be interpreted very widely, in June 2000 the Queen's Bench Divisional Court judged that it applied only to the tunnels and chambers of the sett, to the areas immediately outside sett entrances, and to other structures used by badgers for shelter. For example, a grass field or a woodland glade may show signs of apparent “current use” by badgers, such as tracks, and foraging signs, but this doesn't make it a badger sett. On the other hand, badgers will often use, as a daytime refuge, places that do not fit the typical picture of a badger sett. For example, in rocky areas they might use gaps and crevices amongst rocks and boulders, whilst in suburban areas they sometimes use spaces under garden sheds, raised buildings or other structures. Badgers will also sometimes sleep above ground in a ‘nest’ or ‘couch’ – often tucked under a hedge or bush –

and may make a den amongst hay bales in farm buildings. These more temporary structures could also fall within the definition of a sett depending on the specific circumstances of the case being considered at the time.

This guidance relates solely to England. Different interpretations may exist in Wales and Scotland and the relevant licensing bodies in those countries should be consulted for advice.

It is conceivable that badgers might make use of a sett in ways other than occupying it, but it would seem unreasonable to suggest that they were not using it whilst they were out foraging at night, simply because they were not actually in occupation at that time. Similarly, it seems reasonable to consider that a sett is still in use if it is occupied during the day intermittently, for example once every few days.

It follows that “current use” is not synonymous with current occupation. To strictly equate the two would be nonsense, as a sett could alternate between being ‘in use’ during the day and ‘not in use’ at night as badgers went out to forage each night and returned each morning.

A further element to the definition of a sett in the Act is that it “displays signs indicating” current use. In practical terms this will often be the key issue in deciding if a sett falls within the definition or not. A sett is defined as such (and thus protected) as long as signs indicative of “current use” are present. Thus, a sett remains protected by the Act until such time as the signs (i.e. ‘field signs’) have deteriorated or decayed to such an extent that they no longer indicate that the sett is in “current use”.

Consequently, for a sett to fall within the definition in the Act, a badger need not be

in current occupation, and may not have been for some time. As long as there are signs present indicating “current use” the sett is defined as such in the Act and is therefore protected. The maximum lapse of time between last occupation by badgers and the inspection of a sett for it to be considered in “current use” is how long it takes the signs to disappear, or more precisely, to appear so old as to not indicate “current use”.

CONCLUSION

The following guidance is given on interpretation of “current use”, with respect to the definition of a badger sett in the Act:

Displaying signs indicating current use is not synonymous with current occupation.

A badger sett is protected by the legislation if it “displays signs indicating current use by a badger”. A sett is therefore protected as long as such signs remain present. In practice, this could potentially be for a period of several weeks after the last actual occupation of the sett by a badger or badgers.

It follows that demonstration of the fact that a sett is not occupied by badgers does not necessarily exempt it from the protection afforded by the Act if it still displays signs otherwise indicative of current use.

A sett is likely to fall outside the definition of a sett in the Act if the evidence available indicates that it is NOT in use by badgers; e.g. absence of badger field signs, debris in sett entrances etc. In practice, such a sett may have been unused for several weeks.

NB. Regardless of the presence of signs, the badgers themselves are protected, so a precautionary approach must be taken to interpreting evidence of use at a sett.

NATURAL RESOURCES WALES GUIDANCE ON 'CURRENT USE'

A badger sett is defined in the legislation as “any structure or place which displays signs indicating current use by a badger”. Some badger setts, such as outlier setts, may be used seasonally and NRW takes the Badgers Act definition to include such seasonally used setts. Before a sett can be damaged or closed without a licence it would have to be demonstrated that the sett had been abandoned by badgers and is not just currently unoccupied. Monitoring for a period of up to 12 months may be needed to demonstrate this.

CONCLUSION

In conclusion the decision has to lie with the courts, and where appropriate the use of experts will help the court make that decision. It is clear that this was the intention of the original standing committee. A critical issue, in relation to the Protection of Badgers Act, is how long signs might indicate “current use”; effectively, for how long might they appear fresh. Field signs are likely to last a period of weeks, rather than days or several months, but this will be affected by soil type, weather, habitat, other activity at the site, etc. In the absence of scientific data, a cautious view needs to be taken. In many cases it may be safer to consider when a sett is NOT a sett, as legally defined; i.e. if the field evidence, absence of signs, debris in sett entrances etc, indicate that it is not in use.



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