



NATIONAL FEDERATION
OF BADGER GROUPS

Badgers and the Law

Why are badgers protected?

Badgers and their setts are legally protected from intentional cruelty, such as badger-baiting, and from the results of lawful human activities, such as building developments. The protective legislation has provided a useful tool in deterring the abuse of badgers and in prosecuting those who continue to break the law.

However, it is a sad fact that many thousands of badgers are still killed illegally each year, and the incidents appear to be increasing. Also, due to the nature of the crimes, there are relatively few successful prosecutions.

These notes are intended to provide some background to the law relating to badgers. However, the issue is complex and more detailed information can be obtained by contacting the National Federation of Badger Groups (see the end of this paper for contact details).

Threats to badgers

Badgers in the UK are threatened by both legal and illegal activities. Legal activities, subject to compliance with conditions in the 1992 Act, include:

- road and housing development;
- forestry and agricultural operations;
- badger culling by the Ministry of Agriculture in relation to bovine TB in cattle;
- sett-stopping by fox hunts.

Illegal threats to badgers include:

- badger-digging and baiting;
- snaring;
- poisoning (including the misuse of pesticides);
- lamping;
- sett interference.

Relevant legislation

The main legislation protecting badgers is the **Protection of Badgers Act 1992**. This Act consolidates all previous legislation including the Badgers Act 1973 (as amended) and the Badgers (Further Protection) Act 1991.

Under the 1992 Act it is an offence to:

- wilfully kill, injure, take or attempt to kill, injure or take a badger;
- possess a dead badger or any part of a badger;
- cruelly ill-treat a badger;

- use badger tongs in the course of killing, taking or attempting to kill a badger;
- dig for a badger;
- sell or offer for sale or control any live badger;
- mark, tag or ring a badger;
- interfere with a badger sett by:
 - damaging a sett or any part thereof;
 - destroying a sett;
 - obstructing access to a sett;
 - causing a dog to enter a sett;
 - disturbing a badger while occupying a sett.

The 1992 Act defines a badger sett as: “any structure or place which displays signs indicating current use by a badger”.

1992 Act: powers of sentence

- (i) up to six months' imprisonment or a fine at level 5 or both. The fine may be multiplied by the number of badgers;
- (ii) forfeiture of any badger or skin relating to the offence or any weapon or article used;
- (iii) order destruction or disposal of dogs;
- (iv) disqualification for having custody of a dog.

Badgers are also listed on Schedule 6 of the **Wildlife and Countryside Act 1981** and s11 prohibits the use of certain methods of taking or killing a wild animal, including illuminating devices and some snares.

Other legislation relevant to badgers (and to dogs which may be used in badger offences) includes the **Protection of Animals Act 1911** and the **Abandonment of Animals Act 1960**. Offences include causing unnecessary suffering, or abandoning in circumstances likely to result in such suffering, and fighting or baiting animals. The sentence under this Act is a fine at level 5 or imprisonment up to six months; confiscation or destruction of dogs and a ban on keeping animals. The **Powers of Criminal Courts Act 1973 (s.43)** allows the forfeiture of property used, or intended to be used, to commit or facilitate the commission of any offence, including dogs.

There are powers of arrest only for cruelty to, or abandonment of, domestic or captive animals under the 1911 Animals Act, or if the general arrest conditions apply (s.25 of PACE, 1984).

The **Control of Pesticides Regulations 1986** prohibits the use of unapproved products to deter or kill animals, including badgers. The only repellent

approved currently for use to deter badgers is Renardine. If used at the sett, rather than on lawns, for example, a licence is required, as set out below, otherwise there will be an offence of sett interference.

Licensing: development and protection of property

The Protection of Badgers Act 1992 allows for licences to be issued for a number of purposes, including development under the Town and Country Planning Act 1990 and to prevent serious damage to property. Licences to interfere with badger setts or disturb badgers for development, are issued by the Government's statutory nature conservation agencies (English Nature, Countryside Council for Wales or Scottish Natural Heritage).

Licences to prevent serious damage to property (including land, crops and poultry) are issued by the relevant Government Agriculture Department (MAFF in England, NAWAD in Wales and SERAD in Scotland). Damage licences can allow the interference with, and/or closure of setts. In some cases, licences are issued to allow the killing of badgers, although this is generally a last resort and only a handful of such licences are issued each year.

Licences may be granted by the conservation agencies for interference with badger setts in the course of investigating offences. Such licences are normally issued to Police Wildlife Liaison Officers and to others officially involved in this work.

Other purposes for which licences may be granted are science, education and conservation; zoos; tagging and marking; archaeology; disease prevention; agriculture and forestry; land drainage; and controlling foxes for the protection of livestock, game and wildlife.

Exceptions: fox hunting

The Protection of Badgers Act 1992 also permits fox hunts to obstruct the entrances of badger setts to prevent foxes seeking refuge. However, the following conditions apply:

- that no action is taken other than to obstruct sett entrances;
- the tops and sides of the sett must not be dug into;
- only specified materials must be used to obstruct the entrances and must be placed and removed as specified in the Act;
- the person obstructing the sett entrances must have the authority of the owner or occupier of the land and the authority of a recognised hunt.

Materials permitted for obstructing setts for the purpose of fox hunting must only be:

- untainted straw or hay, or leaf litter, or bracken or loose soil, or

- a bundle of sticks or faggots, or paper sacks either filled with untainted straw or hay, or leaf litter, or bracken or loose soil.

Materials in paragraph (a) can only be placed in the sett entrances on the day of the hunt or after mid-day of the preceding day, and do not need to be removed;

materials in paragraph (b) can only be placed in the sett entrances on the day of the hunt and must be removed the same day. Materials must not be packed hard into the entrances.

Many fox hunts interpret "loose soil" as large, heavy lumps of clay or rocks, packed hard into a sett entrance, making it impossible for badgers to exit.

However, there is now a legal definition of loose soil, which states that loose soil must be *ejusdem generis* with the other materials permitted in the Act, that is, "light, easily removable and of an obstructive character which is not permanent." Clay, if used, must be "sufficiently broken up". "Spit-sized lumps" are not "loose soil". (These quotations are from the judgement. See also the report at (1998) 162 JP 423). Despite the legislation, badger groups are still finding setts blocked illegally.

Further advice and information

For advice and information on badger-related issues, contact Dr Elaine King, NFBG Executive Officer:

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