

SCHEDULE 6 PROTECTION OF WILDLIFE

Protection of Badgers Act 1992 (c. 51)

- 26 (1) The Protection of Badgers Act 1992 is amended as follows.
- (2) In section 1 (taking, injuring or killing badgers)—
- (a) in subsection (1), the words “, or attempts to kill, injure or take,” are repealed,
 - (b) subsection (2) is repealed.
- (3) In section 3 (interfering with badger setts)—
- (a) the existing provision becomes subsection (1),
 - (b) after that provision insert—
- “(2) A person is guilty of an offence if, except as permitted by or under this Act, he knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”
- (4) In section 6 (general exceptions from offences)—
- (a) in paragraph (a)—
 - (i) after “his” insert “unlawful”,
 - (ii) after “it” insert “and releasing it when no longer disabled”,
 - (b) in paragraph (b), for the words from “appears” to “mercy” substitute “has been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of it recovering”.
- (5) In section 8 (exceptions from offence of interfering with badger setts)—
- (a) in subsection (1), for “3” substitute “3(1) or (2)”,
 - (b) in subsection (3)—
 - (i) for “3(a)” substitute “3(1)(a)”,
 - (ii) after “above” insert “or an offence under section 3(2) above relating to an offence under section 3(1)(a), (c) or (e) above”.
- (6) In section 9 (exceptions from offence of possessing or controlling live badger), in paragraph (b)—
- (a) after “his”, where first occurring, insert “unlawful”,
 - (b) after “it”, where second occurring, insert “and releasing it when no longer disabled”.
- (7) For section 11 substitute—

“11 Powers of constables

- (1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act 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 for, search or examine any thing which that person may then be using or may have used, or may have or have had in the

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person's possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing;

- (c) arrest that person;
 - (d) seize and detain for the purposes of proceedings under this Act any thing which may be evidence of the commission of the offence or may be liable to be forfeited under section 12(4) below.
- (2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, for the purpose of exercising the powers conferred by subsection (1) above, enter any land other than a dwelling or lockfast premises.
- (3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under this Act has been committed and that evidence of the offence may be found on any premises, the sheriff or justice may grant a warrant authorising a constable to enter those premises, if necessary using reasonable force, and search them for the purposes of obtaining that evidence.
- (4) A warrant under subsection (3) above continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.
- (5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier's behalf, produce evidence of the constable's authority.
- (6) A constable who enters any land in the exercise of a power conferred by this section—
- (a) may—
 - (i) be accompanied by any other persons; and
 - (ii) take any machinery, other equipment or materials on to the land,
 for the purpose of assisting the constable in the exercise of that power;
 - (b) may take samples of any articles or substances found there and remove the samples from the land.
- (7) A power specified in subsection (6)(a) or (b) above which is exercisable under a warrant is subject to the terms of the warrant.
- (8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) above or by a warrant under subsection (3) above, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.”
- (8) After section 11 insert—

“11A Attempts

- (1) A person who attempts to commit an offence under this Act is guilty of the offence and is liable to be proceeded against and punished accordingly.

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- (2) A person who is in possession, for the purposes of committing an offence under this Act, of anything capable of being used for committing the offence is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (3) If, in any proceedings for an offence under section 1(1) above consisting of an attempt 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.”
- (9) In section 12 (penalties etc.)—
- (a) in subsection (1)—
- (i) for “2 or 3 above ” substitute “2(1)(d), 3(1)(a) to (c) or (e) above or under section 3(2) above (in relation to an act made unlawful by section 3(1)(a) to (c) or (e) above)”,
- (ii) the word “4,” is repealed,
- (b) after subsection (1) insert—
- “(1A) A person guilty of an offence under section 2(1)(a) to (c), 3(1)(d) or 4 above or under section 3(2) above (in relation to an act made unlawful by section 3(1)(d) above) is liable—
- (a) 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,
- (b) on conviction on indictment to imprisonment for a term not exceeding three years or to a fine or both.”,
- (c) in subsection (2), after “(1)” insert “or (1A)(a)”.
- (10) After section 12 insert—

“12A Time limit for bringing summary proceedings

- (1) Summary proceedings for an offence under section 1(1), 2, 3, 5 or 10(8) of this Act may, subject to subsection (2) below, be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor’s knowledge.
- (2) No such proceedings may be brought more than 3 years—
- (a) after the commission of the offence, or
- (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (3) A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor’s knowledge is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

12B Offences by bodies corporate etc.

- (1) Where an offence under this Act committed—

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- (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a director, manager or secretary of the body corporate, or
 - (ii) purports to act in any such capacity,
 - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a partner, or
 - (ii) purports to act in that capacity,
 - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is concerned in the management or control of the association, or
 - (ii) purports to act in the capacity of a person so concerned,
- the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.
 - (3) Any penalty imposed on a body corporate, Scottish partnership or, as the case may be, unincorporated association on conviction of an offence under this Act is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995 (c. 46).”
- (11) In section 13 (power of court where dog used etc.), in subsection (1), for “3” substitute “3(1) or (2)”.