



# Protection of Badgers Act 1992

## 1992 CHAPTER 51

### *Enforcement and penalties*

#### **11 Powers of constables.**

- [<sup>F1</sup>(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 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;
  - <sup>F2</sup>(c) .....
  - (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.

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- (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.]

#### Textual Amendments

- F1** S. 11 substituted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), [Sch. 6 para. 26\(7\)](#); [S.S.I. 2004/407](#), art. 2(b)
- F2** S. 11(1)(c) repealed (S.) (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 9](#); [S.S.I. 2017/345](#), art. 3, sch.

#### Marginal Citations

- M1** 1973 c. 57.

### [<sup>F3</sup>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.
- (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 [<sup>F4</sup>or section 1(6) above] consisting of [<sup>F5</sup>or involving] an attempt to kill, injure or take a badger, there is evidence from which it could reasonably be concluded that at the material time [<sup>F6</sup>the accused][<sup>F6</sup>a person] 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.]

#### Textual Amendments

- F3** S. 11A inserted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), [Sch. 6 para. 26\(8\)](#); [S.S.I. 2004/407](#), art. 2(b)
- F4** Words in s. 11A(3) inserted (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 33\(8\)\(a\)](#), 43(1) (with s. 41(1)); [S.S.I. 2011/279](#), art. 2(1)(m)

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- F5** Words in s. 11A(3) inserted (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#) , **ss. 33(8)(b)** , 43(1) (with s. 41(1) ); S.S.I. 2011/279 , art. 2(1)(m)
- F6** Words in s. 11A(3) substituted (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#) , **ss. 33(8)(c)** , 43(1) (with s. 41(1) ); S.S.I. 2011/279 , art. 2(1)(m)

## 12 Penalties and forfeiture.

- (1) A person guilty of an offence under <sup>F7</sup>section 1(1) or (3), <sup>F8</sup>2 or 3 above<sup>F8</sup>2(1)(d), 3(1)(a) to (c) or (e) above or under section 3(2) above<sup>F7</sup>a provision mentioned in subsection (1ZA) below] (in relation to an act made unlawful by section 3(1)(a) to (c) or (e) above) is liable on summary conviction to imprisonment for a term not exceeding <sup>F9</sup>six<sup>F9</sup>twelve] months or a fine not exceeding <sup>F10</sup>level 5 on the standard scale<sup>F10</sup>£40,000] or both; and a person guilty of an offence under section <sup>F11</sup>4,] 5 <sup>F12</sup>(1) or (2)] or 10(8) above or 13(7) below is liable on summary conviction to a fine not exceeding <sup>F13</sup>that level<sup>F13</sup>level 5 on the standard scale].

<sup>F14</sup>(1ZA) The provisions referred to in subsection (1) above are—

- (a) section 2(1)(d) above or section 2(3) above (in relation to an act made unlawful by section 2(1)(d) above);<sup>F15</sup>...
- <sup>F15</sup>(b) .....

<sup>F16</sup>(1A) A person guilty of an offence under <sup>F17</sup>a provision mentioned in subsection (1B) below] is liable—

- (a) on summary conviction to imprisonment for a term not exceeding <sup>F18</sup>12] months or a fine not exceeding <sup>F19</sup>the statutory maximum] or both,
- (b) on conviction on indictment to imprisonment for a term not exceeding three years or to a fine or both.]

<sup>F20</sup>(1B) The provisions referred in subsection (1A) above are—

- (a) <sup>F21</sup>section 1(3) and (6) (in relation to an act made unlawful by section 1(3)),]
- <sup>F22</sup>(b) .....
- <sup>F22</sup>(c) .....
- (d) section 4(1) and (2) above.]

<sup>F23</sup>(1C) A person guilty of an offence under a provision mentioned in subsection (1D) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or both.

(1D) The provisions referred to in subsection (1C) are—

- (a) section 1(1) and (6) (in relation to an act made unlawful by section 1(1)),
- (b) section 2(1)(a) to (c) and (3) (in relation to an act made unlawful by section 2(1)(a) to (c)),
- (c) section 3.]

- (2) Where an offence was committed in respect of more than one badger the maximum fine which may be imposed under subsection (1) <sup>F24</sup>, (1A)(a) or (1C)(a)] above shall be determined as if the person convicted had been convicted of a separate offence in respect of each badger.

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- (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.

#### Textual Amendments

- F7** Words in s. 12(1) substituted (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 33(9)(a)(i)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F8** Words in s. 12(1) substituted (S.) (1.10.2004) by Nature Conservation (Scotland) Act 2004 (asp 6), s. 59(2), **Sch. 6 para. 26(9)(a)(i)**; S.S.I. 2004/407, art. 2(b)
- F9** Word in s. 12(1) substituted (S.) (30.11.2020) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), **ss. 8(2)(a)(i)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)
- F10** Sum in S. 12(1) substituted (S.) (30.11.2020) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), **ss. 8(2)(a)(ii)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)
- F11** Word in s. 12(1) repealed (S.) (1.10.2004) by Nature Conservation (Scotland) Act 2004 (asp 6), s. 59(2), **Sch. 6 para. 26(9)(a)(ii)**; S.S.I. 2004/407, art. 2(b)
- F12** Words in s. 12(1) inserted (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 33(9)(a)(ii)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F13** Words in s. 12(1) substituted (S.) (30.11.2020) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), **ss. 8(2)(a)(iii)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)
- F14** S. 12(1ZA) inserted (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 33(9)(b)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F15** S. 12(1ZA)(b) and preceding word repealed (S.) (30.11.2020) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), **ss. 8(2)(b)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)
- F16** S. 12(1A) inserted (S.) (1.10.2004) by Nature Conservation (Scotland) Act 2004 (asp 6), s. 59(2), **Sch. 6 para. 26(9)(b)**; S.S.I. 2004/407, art. 2(b)
- F17** Words in s. 12(1A) substituted (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 33(9)(c)(i)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F18** Word in s. 12(1A)(a) substituted (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **s. 33(9)(c)(ii)(A)**43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F19** Words in s. 12(1A)(a) substituted (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **s. 33(9)(c)(ii)(B)**43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F20** S. 12(1B) inserted (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 33(9)(d)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F21** S. 12(1B)(a) substituted (S.) (30.11.2020) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), **ss. 8(2)(c)(i)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)
- F22** S. 12(1B)(b)(c) repealed (S.) (30.11.2020) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), **ss. 8(2)(c)(ii)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)
- F23** S. 12(1C)(1D) inserted (S.) (30.11.2020) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), **ss. 8(2)(d)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)
- F24** Words in s. 12(2) substituted (S.) (30.11.2020) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), **ss. 8(2)(e)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)

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### [<sup>F25</sup>12ZA 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.]

#### Textual Amendments

**F25** S. 12ZA inserted (31.5.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), s. 107, [Sch. 6 para. 6](#); S.I. 2006/1382, art. 2

### [<sup>F26</sup>12A Time limit for bringing summary proceedings]

- (1) Summary proceedings for an offence under [<sup>F27</sup>a provision mentioned in subsection (1A)] 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.

[ The provisions referred to in subsection (1) are—

- <sup>F28</sup>(1A) (a) section 1(3), (5) and (6) (in relation to an act made unlawful by section 1(3)),  
(b) section 2(1)(d) and (3) (in relation to an act made unlawful by section 2(1)(d)),  
(c) section 3,  
(d) section 4,  
(e) section 5,  
(f) section 10(8).]
- (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.]

#### Textual Amendments

**F26** Ss. 12A, 12B inserted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), [Sch. 6 para. 26\(10\)](#); S.S.I. 2004/407, art. 2(b)

**F27** Words in s. 12A(1) substituted (S.) (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), [ss. 8\(3\)\(a\)](#), 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)

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**F28** S. 12A(1A) inserted (S.) (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\), ss. 8\(3\)\(b\), 22\(2\)](#); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)

**[<sup>F26</sup>12B Offences by bodies corporate etc.**

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

**Textual Amendments**

**F26** Ss. 12A, 12B inserted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\), s. 59\(2\), Sch. 6 para. 26\(10\)](#); S.S.I. 2004/407, art. 2(b)

**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) [<sup>F29</sup>or (6) (in relation to an act made unlawful by section 1(1))], 2 or [<sup>F30</sup>3][<sup>F30</sup>3(1) or (2)] 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—

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- (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 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 [<sup>F31</sup>in the same local justice ] area as that court) 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

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- (c) in subsection (5), the words “(or any magistrates’ court acting [<sup>F32</sup>in the same local justice] area as that court)” shall be omitted.

#### Textual Amendments

- F29** Words in s. 13 inserted (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), **ss. 33(11)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F30** Word in s. 13(1) substituted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), **Sch. 6 para. 26(11)**; S.S.I. 2004/407, art. 2(b)
- F31** Words in s. 13(5) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), **Sch. 8 para. 359(a)**; S.I. 2005/910, art. 3(y)
- F32** Words in s. 13(9)(c) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), **Sch. 8 para. 359(b)**; S.I. 2005/910, art. 3(y)

### [<sup>F33</sup>13A Crown application: Scotland

- (1) This Act binds the Crown.
- (2) No contravention by the Crown of any provision of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (2), this Act applies to persons in the public service of the Crown as it applies to other persons.]

#### Textual Amendments

- F33** S. 13A inserted (S.) (1.1.2012) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), **ss. 41(4)**, 43(1) (with s. 41(1)); S.S.I. 2011/433, art. 2(1)(i)

## 14 Interpretation.

In this Act—

- “ammunition” has the same meaning as in the <sup>M2</sup>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.

#### Marginal Citations

- M2** 1968 c. 27.

## 15 Short title, repeals, commencement and extent.

- (1) This Act may be cited as the Protection of Badgers Act 1992.



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**Changes to legislation:** *There are currently no known outstanding effects for the Protection of Badgers Act 1992, Cross Heading: Enforcement and penalties. (See end of Document for details)*

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- (2) The enactments mentioned in the Schedule to this Act are repealed to the extent specified in the third column of that Schedule.
- (3) This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.
- (4) This Act does not extend to Northern Ireland.

**Changes to legislation:**

There are currently no known outstanding effects for the Protection of Badgers Act 1992, Cross Heading: Enforcement and penalties.