



# Protection of Badgers Act 1992

## 1992 CHAPTER 51

### *Exceptions and licences*

#### **6 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;
- (c) unavoidably killing or injuring a badger as an incidental result of a lawful action;
- (d) doing anything which is authorised under the <sup>M1</sup>Animals (Scientific Procedures) Act 1986.

#### **Marginal Citations**

M1 1986 c. 14.

#### **7 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—

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- (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.

## **8 Exceptions from s. 3.**

- (1) Subject to subsection (2) below, a person is not guilty of an offence under section 3 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), (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) A person is not guilty of an offence under section 3(a), (c) or (e) above by reason of obstructing any entrance of a badger sett for the purpose of hunting foxes with hounds if he—
  - (a) takes no action other than obstructing such entrances;
  - (b) does not dig into the tops or sides of the entrances;
  - (c) complies with subsection (5) below as to the materials used for obstructing the entrances and with subsection (6) below as to how and when they are to be placed and removed; and
  - (d) is acting with the authority of the owner or occupier of the land and the authority of a recognised Hunt.
- (5) The materials used shall be only—
  - (a) untainted straw or hay, or leaf-litter, bracken or loose soil; or
  - (b) a bundle of sticks or faggots, or paper sacks either empty or filled with untainted straw or hay or leaf-litter, bracken or loose soil.
- (6) The materials shall not be packed hard into the entrances and—
  - (a) if they are of the kind mentioned in paragraph (a) of subsection (5) above, they shall not be placed in the entrances except on the day of the hunt or after midday on the preceding day;
  - (b) if they are of the kind mentioned in paragraph (b) of that subsection, they shall not be placed in the entrances except on the day of the hunt and shall be removed on the same day.
- (7) A person is not guilty of an offence under section 3(a), (c) or (e) above by reason of his hounds marking at a badger sett provided they are withdrawn as soon as reasonably practicable.
- (8) Each recognised Hunt shall keep a register of the persons authorised to act under subsection (4) above.
- (9) In this section “recognised Hunt” means a Hunt recognised by the Masters of Fox Hounds Association, the Association of Masters of Harriers and Beagles or the Central Committee of Fell Packs.

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## 9 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.

## 10 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 <sup>M2</sup>Town and Country Planning Act 1990 or, as respects Scotland, [<sup>F1</sup>section 26(1) of the Town and Country Planning (Scotland) Act 1997], to interfere with a badger sett within an area specified in the licence by any means so specified;
- (e) for the purpose of the preservation, or archaeological investigation, of a monument scheduled under section 1 of the <sup>M3</sup>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.

(2) 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—

- (a) 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;
- (b) 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;
- (c) 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;

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- (d) for the purpose of any operation (whether by virtue of the <sup>M4</sup>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.
- (3) A licence may be granted to any person either by the appropriate Conservancy Council 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, 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 wild life.
- (4) In this section “the appropriate Conservancy Council” means, in relation to a licence for an area—
- (a) in England, [<sup>F2</sup>English Nature];
  - (b) in Wales, the Countryside Council 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 [<sup>F3</sup>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 Conservancy Council 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 Conservancy Council as to the circumstances in which, in that Council’s opinion, licences of that description should be granted.
- (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.
- (10) It shall be a defence in proceedings for an offence under section 8(b) of the <sup>M5</sup>Protection of Animals Act 1911 or section 7(b) of the <sup>M6</sup>Protection of Animals (Scotland) Act 1912 (each of which restricts the placing on land of poison and poisonous substances) to show that—
- (a) the act alleged to constitute the offence was done under the authority of a licence granted under subsection (2)(a) above; and
  - (b) any conditions specified in the licence were complied with.

#### Textual Amendments

- F1** Words in s. 10(1)(d) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 53**
- F2** Words in s. 10(4)(a) substituted (E.W.) (30.1.2001) by 2000 c. 37, ss. 73(4), 103(2), **Sch. 8 para. 1(s)**
- F3** Words in s. 10(5)(a) substituted (27.3.2002) by S.I. 2002/794, art. 5(1), **Sch. 1 para. 35** (with art. 6)

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**Marginal Citations**

- M2** 1990 c. 8 .
- M3** 1979 c. 46 .
- M4** 1991 c. 59 .
- M5** 1911 c. 27 .
- M6** 1912 c. 14 .

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