

BEST PRACTICE GUIDANCE - BADGERS, THE LAW AND LICENSING

INTRODUCTION

The Protection of Badgers Act 1992 (as amended) protects both badgers and their setts. Prohibited actions include wilfully killing, injuring, possessing or taking a badger or intentionally or recklessly interfering with a badger sett. Interfering with a badger sett includes damaging, destroying or obstructing access to a sett or to any part of a sett or disturbing a badger when it is occupying a badger sett. The Nature Conservation (Scotland) Act 2004 also made it an offence for a person to knowingly cause or permit anyone to interfere with a badger sett.

LICENCES

Provision is given in the legislation for licences to be granted to undertake actions that would otherwise be illegal under this legislation. Licences can only be issued for a limited number of stated purposes. Licences are issued either by Scottish Natural Heritage or by the Scottish Executive depending on the purpose.

LICENCES FOR DEVELOPMENT

Scottish Natural Heritage (SNH) is the authority responsible for issuing licences for the purpose of development as defined under Section 26(1) of the Town and Country Planning (Scotland) Act 1997. Licences issued for development can permit the licence holder to interfere with a badger sett in a specified area and by specified means. Licences cannot be issued for the purpose of development to carry out any other actions including killing or taking badgers.

A licence must be obtained from SNH for any work that may cause disturbance to a badger or involves the damage or destruction of a sett. What constitutes disturbance depends on the nature of the activity proposed: as a rule a licence is normally required for any works within 30 metres of a badger sett, but this distance may increase for more disruptive activities such as blasting or pile-driving. Licences are generally, but not exclusively, issued to badger experts, whose role is to provide on-site advice and, where necessary, supervise all the licensed work. To whom the licence is issued is dependent on the development, but also on what and who is involved in the necessary works. Should there be any uncertainty over the respective roles and responsibilities in this regard, the developer should contact SNH for clarification.

Licences are not normally issued during the breeding season, which is between 30th November and 1st July, and cannot be issued retrospectively. Activities that necessarily involve disturbance should therefore be programmed to take place outwith this period. Licences are usually only issued after full planning permission has been granted.

EXCLUSIONS

The exclusion of badgers from their setts for development purposes must be licensed by SNH. Successful exclusion normally involves one-way badger gates and appropriate fencing and needs to be carefully planned and installed.

Licences to exclude badgers from main or annexe setts will normally only be issued if a suitable programme of mitigation has been developed. A mitigation programme in these cases should include the provision of an artificial sett and, if necessary, appropriate measures implemented to maintain the badgers' foraging resource. Licences to exclude badgers from larger setts will not be issued if they are likely to directly result in badger mortality.

SNH cannot licence translocation of badgers for the purpose of development.