Guidance on undertaking work close to badger setts that cannot be licensed under the Protection of Badgers Act 1992

This note is intended to advise those who need to carry out work on, or near badger setts where the purpose of the work may not fall within the scope of the Protection of Badgers Act 1992 (“the Act”). It is not exhaustive and is only intended as a reference for key information relating to work carried out near badgers’ setts that may interfere with the setts and where a licence has not been obtained or cannot be obtained. It remains the readers’ responsibility to ensure that due consideration has been given to all other relevant legislation. If there are areas that you require more information on then please contact Natural Resources Wales (NRW) or Welsh Government Wildlife Advisers (Tel. 0300 062 2297).

Offences (Section 3 of the Act)

A person is guilty of an offence if they interfere with a badger or a badger sett as outlined in section 3 of the Act. This states that:
“A person is guilty of an offence… by doing any of the following things… -
   a) damaging a badger sett or any part of it;
   b) destroying a badger sett;
   c) obstructing access to, or any entrance of, a badger sett;
   d) causing a dog to enter a badger sett; or
   e) disturbing a badger when it is occupying a badger sett, intending to do any of these things or being reckless as to whether his actions would have any of those consequences”

Defences (Section 8 of the Act)

The Act provides a defence against the offences outlined under section 3(a), 3(c) and 3(e). However, the defence is only sustained if it can be argued that the unintentional damaging was ‘the incidental result of a lawful operation’ and ‘could not reasonably have been avoided.’ as set out in section 8 (3) of the Act.

In order to demonstrate these two elements of the defence, as far as is reasonable, appropriate action must be taken to safeguard the badgers and their setts to ensure there is as little risk as possible of interfering with them.

If someone wishes to interfere with badgers or badger setts for the purposes listed below they can apply for a licence under section 10 of the Act from NRW or the WG.

Licences

Under section 10(1) and 10(2) of the Act a licence can be obtained for certain specified activities. Some are granted by NRW and some by WG:

Section 10 (1) - NRW issued licences
   • Scientific or educational purposes, or for the conservation of badgers;
• Zoological gardens or collections;
• Ringing and marking of badgers;
• Development as defined in Section 55 (1) of the Town and Country Planning Act 1990 (see ‘What is meant by development’);
• Preservation, or archaeological investigation, of a monument scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979; and/or
• Investigating whether any offence has been committed or gathering evidence in connection with proceedings before any court.

Please see the following link for application forms for NRW licences:

Section 10 (2) - WG issued licences
• Preventing the spread of disease;
• Preventing serious damage to land, crops, poultry or any other form of property (e.g. a house, garden, road etc.)
• Any agricultural or forestry operations; and/or
• Any operation to maintain or improve any existing watercourse or drainage works, or to construct new works required for the drainage of land, including works of defence against sea or tidal water.

Please see the following link for more information and the appropriate applications forms for WG licences:
http://wales.gov.uk/topics/environmentcountryside/consmanagement/conservationbiodiversity/wildlifelicences/ukspecies/badgers/?lang=en

What is meant by development?

Section 55 (1) of the Town and Country Planning Act 1990 (“the 1990 Act”) defines ‘development’ as:
“...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

Works that do not constitute development under the Town and Country Planning Act

Under the 1990 Act, various operations are excluded from the definition of development. These include the following:
• the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road but... not including any works which may have significant adverse effects on the environment;
• the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes,
cables or other apparatus, including the breaking open of any street or other land for that purpose;
• the demolition of any description of building specified in a direction given by the Welsh Ministers to local planning authorities generally or to a particular local planning authority.

Please note that this list is not exhaustive and if works are being carried out because badgers have contributed to damage, WG may be in a position to license those works. WG Wildlife Advisers may also visit and provide on-site advice. Should you require further information then please contact NRW or WG who will be able to advise whether a licence should be obtained.

Carrying out works without a licence

If it is considered appropriate to undertake works that may cause interference with badgers and/or their setts, where the purpose of the work does not fall within the scope of the Protection of Badgers Act, NRW advise that the following is considered and applied:

1. The work must be necessary and unavoidable.

2. A method statement must be prepared, describing how work will be undertaken to minimise the likelihood of any offences being committed. This must be agreed with NRW before work starts.

3. The local badger group should be informed. Where badgers may be disturbed within a sett, a suitably experienced person must be on hand to provide advice.

4. Work near active badger setts must be carried out between July and November inclusive, to avoid the disturbance of breeding female badgers.

5. Badger tunnels can extend up to 20 metres from the entrance holes and are located between 0.2 metres and several metres deep, depending on the soil and topography. Excavation work and heavy machinery must be kept well away from where it could result in damage to the sett or disturbance to any badger occupying the sett.

6. All works within 10 metres of the nearest sett entrance must be undertaken using hand tools only.

7. Fires and chemicals must not be used within 20 metres of a sett. Chemicals should be stored safely away from the sett area.

8. Disturbances, such as loud noise or vibrations, that might agitate badgers occupying a sett must be avoided or limited to areas well away from the sett.
9. Scrub clearance must be avoided over the tops of setts and close to sett entrances.*

10. Trees and shrubs must be felled so that they fall away from the obvious direction of a sett and must not be uprooted but cut to ground level where necessary.*

11. Badger paths must be cleared of felled timber and scrub wherever possible.

12. All trenches left open overnight must include a means of escape for any animals which may fall in.

13. No dogs to be taken onto the site by any of the workforce.

14. Entrances to setts must not be stopped, i.e. where the entrance of the sett is closed so as to prevent badgers’ exiting, except lightly and temporarily and stopping should be undertaken only to prevent soil falling into the holes. All stopping must be removed before leaving the site at the end of the day.

15. Where it is necessary to walk over the top of a sett, planking must be provided to spread the load if the soil is very light, or if there is a chance of sett collapse.

16. All work must be carried out as quickly and quietly as possible.

17. Operations involving use of machines near setts must be undertaken only by those suitably trained or competent in the use of the equipment.

* These works might be licensable by Welsh Government – please contact their Wildlife Advisers for guidance (tel. 0300 062 2297).