

CLASS LICENCE

Interference with badger setts for the purpose of undertaking water course or drainage maintenance operations



OVERVIEW

This licence permits interference with badger (*Meles meles*) setts where there is a need to conduct routine water course or drainage maintenance operations such as vegetation cutting, bank reforming, culvert clearance etc.

Only employees or contractors of the **Internal Drainage Boards** are entitled to register to use this licence:

PLEASE NOTE that this licence cannot be relied upon where badger setts are causing problems in flood defences and reservoir dams. In these situations, the Environment Agency's Operational Instructions 259 10 (*Managing burrowing animals in flood defence assets*) and 260_10 (*Managing badgers in reservoir dams and other flood defence assets*) must be referred to.

Registration	Anyone wishing to use this licence must first apply to Natural England to be registered.
Recording & reporting	There are data recording and annual reporting requirements.
Reference	WML – CL27

LICENCE TERMS and CONDITIONS

Legislation	Protection of Badgers Act 1992 ("the 1992 Act")
Relevant section(s)	Section 10(2)(d)
Valid for the period	1 January 2019 to 31 December 2019 (inclusive)
Area valid in	All counties of England (landward of the mean low water mark)
Purpose(s) for which this licence is issued	Any operation (whether by virtue of the 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.
What this licence permits	Subject to all the terms and conditions of this licence and solely for the purposes stated above, this licence permits Registered Persons and their Assistants to: Interfere with a badger (<i>Meles meles</i>) sett by means of: <ul style="list-style-type: none">• Cutting bank vegetation with hand-tools and/or a tractor mounted flail.• Cutting bank vegetation and processing with a purpose-built harvester.• Cutting mid-channel vegetation with a 360° excavator.• Reforming banks with a 360° excavator.• De-silting drainage beds with a 360° excavator.• Maintaining low-level drainage culverts with a 360° excavator.
Who can use this licence	Persons registered to use this licence (Registered Persons) and Assistants of Registered Persons (see Definitions) who are employees or contractors of the Internal Drainage Boards, except those with a recent conviction (see Information and Advice note I).

Definitions used in this licence

A “*Registered Person*” is a person who has successfully registered to use this licence in accordance with Condition 13a.

An “*Assistant*” is a person assisting a Registered Person. Assistants are only authorised to act under this licence whilst they are under the direct supervision of the Registered Person.

The 1992 Act defines a badger sett as “*any structure or place which displays signs indicating current use by a badger*”. Examples of signs that may indicate ‘current use’ include entrances that are >25cm in diameter with a flattened oval appearance, entrances that are clear of debris and vegetation, entrances with smoothed sides (due to the passage of badgers), large spoil heaps (sometimes fresh) outside entrances, fresh bedding outside entrances, fresh badger footprints in spoil heaps, and well trampled runs leading to and from entrances. See Advice and Information note b for further guidance on interpretation of ‘current use’ of a badger sett.

LICENCE CONDITIONS

1. Before undertaking any action at a site under this licence, the licensee must notify Natural England by telephone or email of the name and location of the site. Notice must be given at least two working days in advance of the action being taken.
2. Tractors and excavators must operate from the opposite bank to that occupied by the badger sett (see Definitions for the definition of a sett) unless this is not feasible or practicable. If operating from the bank occupied by the sett is unavoidable, then only tracked machinery may be used in the sett area.
3. Tractors and excavators must not drive directly over badger sett entrances.

Vegetation Cutting

4. Any cut vegetation in sett entrances that is likely to prevent access to the sett by a badger, must be removed at the end of each day’s work.
5. Vegetation from the mid-channel must not be placed over sett entrances but must be placed at least five metres from sett entrances to avoid obstructing access by badgers.
6. During vegetation cutting, it is not permissible to damage or obstruct access to water vole (*Arvicola amphibious*, previously known as *Arvicola terrestris*) burrows or disturb water voles while they are using such places unless permitted to do so under licence by Natural England (See Information and Advice note c).

Bank Reformation and De-silting

7. Prior to bank reformation, badger sett entrances must be temporarily plugged with straw-filled (or similar material) hessian or paper sacks to prevent the associated tunnel becoming blocked with soil.
8. Where it is necessary to dig into the badger sett to achieve the desired bank profile/channel width the excavation of sett tunnels must be limited to the minimum required to achieve the required profile/channel width. Following re-profiling, badgers must be able to freely access and exit sett entrances.
9. Excavated soil from the bank and silt from the channel must be placed at least five metres from the sett entrance(s) to avoid obstructing access by badgers.
10. At the end of each day’s work, the hessian or paper sacks must be removed from the badger sett entrances and the tunnels left unobstructed.
11. These operations must not be conducted during the months of February, March or April so as to avoid the most sensitive period of the badger breeding season.

Low-level Culverts

12. If low-level culverts are to be installed within drainage channels where excavated spoil from a badger sett is blocking the flow of water, the culvert must be installed below the level of the lowest sett entrance.

Authorised Persons

13. To use this licence you must either:
- Register with Natural England to use the licence (see Information and Advice notes e - i);
 - Be authorised by a Registered Person to act as an Assistant (see Definitions), in which case you may act under the authority of this licence so long as you are doing so under the direct supervision of a Registered Person.
14. The Registered Person is responsible for all activities carried out under this licence, including activities carried out by their Assistants.
15. All persons using this licence must possess appropriate knowledge and experience of the relevant species (see Information and Advice note d).
16. Whilst engaged in work permitted by this licence all persons registered or authorised to act under this licence must have access to a copy of this licence and produce it to any police officer or any Natural England officer on demand.

Recording and reporting requirements

17. The Registered Person must maintain a record, which must be kept for at least 12 months beyond the expiry date of this licence, in accordance with the requirements of Annex A. Records are to be made available for inspection at any reasonable time by Natural England.
18. The Registered Person must comply with the reporting requirements specified in Annex A. Reports, including 'nil' returns, must be submitted for the period 1 January to 31 December by no later than 31 January of the following year.
19. If Conditions 17 and 18 are not met then the Registered Person will, by default, no longer be considered registered to act under this licence.

IMPORTANT

This licence authorises acts that would otherwise be offences under the legislation referred to above. Failure to comply with its terms and conditions:

- may be an offence against the 1992 Act or mean that the licence cannot be relied upon and an offence could therefore be committed. The maximum penalty available for an offence under the 1992 Act is, at the time of the issue of this licence, an unlimited fine and/or a six month custodial sentence; and
- may result in your permission to use this licence being withdrawn. Natural England will inform any person or organisation whose permission to use this licence is withdrawn in writing. This sanction may be applied to other similar licences.

If the activity that you wish to undertake is not covered by this licence, or if you are unable to comply with any of the terms and conditions which apply to the use of this licence, then you will need to apply to Natural England for an individual licence.

Issued by and on behalf of Natural England on

1 January 2019

INFORMATION AND ADVICE specific to this licence

Operational guidance

- a. Placing straw-filled hessian or paper sacks into badger sett tunnels during operations reduces the likelihood of encountering badgers and ensures that the tunnel can be located in the event of a collapse. To reduce the risk of injury to badgers, the excavator bucket must never dig beyond the sack. If it is necessary to excavate beyond the sack, the sack must be removed (by hand) and the tunnel inspected with a bright torch to ascertain the tunnel layout. Provided the tunnel does not branch and no badgers are present, the sack must be replaced to arm's-length and the process repeated until the desired bank profile/channel width is achieved.
- b. The following relevant guidance is available
 - Guidance on what constitutes "disturbance" to badgers in their setts ([WML-G16](#))
 - Guidance on "current use" of a badger sett ([WML-G17](#))
- c. Under the Wildlife & Countryside Act 1981 (as amended) it is an offence to (i) intentionally kill, injure or take a water vole, (ii) intentionally or recklessly damage, destroy or obstruct access to any structure or place which water voles use for shelter or protection and (iii) disturb water voles while they are using such a place. Licences are available from Natural England to permit activities that would otherwise be unlawful for specific purposes such as conserving flora and fauna.

Training Requirement

- d. Training applicable to the activities permitted by the licence should be undertaken at regular intervals. It is the responsibility of each Registered Person to maintain their expertise at an appropriate level to act under this licence and it is also the Registered Person's responsibility to ensure that Assistants have appropriate training, experience and instruction to act under this licence.

Registering to use this licence

- e. Only Registered Persons, or persons authorised or supervised by a Registered Person (see Condition 13), may act under this licence. Anyone seeking to become a Registered Person must apply to Natural England. You can [register online](#) to use this licence. Alternatively applications can be submitted by email or post (contact details below). Applications require supporting evidence (including references) indicating appropriate knowledge and experience of the species covered by this licence and the management techniques permitted (see '[Reference guidance](#)').
- f. Once registered, a person is entitled to use this licence so long as they satisfy the licence's terms and conditions; annual re-registration is not required. Failure to comply by the terms and conditions, including the recording and reporting requirements, will, by default, render registration null and void. The annual reporting process is used to verify a person's desire to remain registered.
- g. Anyone seeking to confirm whether a person is registered to use this licence should contact Natural England Wildlife Licensing (contact details below).
- h. A person's registration may be revoked by Natural England, for example, if that person breaches the conditions of this licence. In these circumstances Natural England will normally give 28 days' notice of our intention to revoke a person's registration.
- i. Registration to use this licence to interfere with a badger sett is taken as a statement that the Registered Person has an appropriate level of competence in these activities. The licence should not be used or taken to indicate competence in any other activity that may be associated with work affecting badgers (eg for the purposes of any other activity for which an individual licence is required – contact Natural England Wildlife Licensing).

INFORMATION AND ADVICE for all Class and General Licences

General Information

- j. Natural England checks compliance with licences and the attached conditions. Where breaches are identified, these may be subject to enforcement action.
- k. Ordinarily, licences will be reissued on 1 January each year (*NB you do not need to re-register for those with registration requirements*). Please note, however, that they can be modified or revoked at any time by Natural England or the Secretary of State, but this will not be done unless there are good reasons for doing so. You are advised to check the terms and conditions of a licence prior to your first use of it each year in case of amendments.
- l. No person convicted on or after 1 January 2010 of an offence under the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981, the Protection of Badgers Act 1992, the Deer Act 1991, the Hunting Act 2004, the Wild Mammals (Protection) Act 1996, the Animal Welfare Act 2006 or the Protection of Animals Act 1911 (all as amended) may use this licence without the permission of Natural England unless, in respect of that offence, either:
 - i. they are a rehabilitated person for the purposes of the Rehabilitation of Offenders Act 1974 and their conviction is treated as spent; or

ii. a court has made an order discharging them absolutely.

Any request to use the licence by a person to whom this note applies will be considered on its merits.

The limits of licences

- m. Licences permit action only for the purposes specified on that licence.
- n. Licences do not permit actions prohibited under any other legislation, nor do they confer any right of entry upon land.
- o. Unless otherwise stated the provisions of Natural England licences only apply landward of the mean low water mark in England. The Marine Management Organisation is responsible for all licensing seaward of the mean low water mark.

Protected sites

- o. With the exception of WML-CL25 (*To permit the diversionary feeding of hen harrier (Circus cyaneus) on grouse moors in northern England*), a licence is not permission from Natural England for an activity that could damage a Site of Special Scientific Interest (SSSI). The notification documents for each SSSI contain a list of operations that could damage its special features and for which prior permission from Natural England is required. Owners and occupiers of sites notified as SSSIs are required to give written notice to Natural England before beginning any of these operations, or allowing someone else to carry out these activities. A similar process applies for public bodies and statutory undertakers (as defined under Section 28G of the Wildlife and Countryside Act 1981 (as amended)) and this obligation applies even where the operations are carried out on land outside of the SSSI. See Gov.uk for further information.
- p. In considering whether to issue consent or assent for activities on a SSSI that is a European Site, in other words a Special Protection Area (SPA) or Special Area of Conservation (SAC), Natural England will consider whether there is likely to be a significant effect on features of European importance (alone or in combination) and carry out a Habitats Regulations Assessment, as required.
- q. To identify SSSIs, European Sites and the features for which they are designated, refer to www.magic.gov.uk. Consult the SSSI citation for details of 'operations likely to damage', and consider whether your activity is likely to have an impact. Advice may be sought from the local adviser for the SSSI: <https://www.gov.uk/government/organisations/natural-england>.

Using and Sharing Your Information

- r. There is significant public interest in wildlife licensing and in those who benefit from receiving a wildlife licence. We may make information publicly available, for more information, please see our [Privacy Notice](#).

Contact details for Natural England

For licensing enquiries:

Telephone 020 802 61089

Email wildlife@naturalengland.org.uk

Postal address Wildlife Licensing, Operations Delivery,
Natural England, Horizon House, Deanery Road, Bristol, BS1
5AH

For other enquiries use the Enquiry Service:

Telephone 0300 060 3900

Email enquiries@naturalengland.org.uk

Web <https://www.gov.uk/government/organisations/natural-england>

ANNEX A - Recording and reporting requirements

Records

Each Registered Person must maintain, and keep for at least 12 months beyond the expiry date of this licence, a record of the following information for each water course or drainage maintenance operation conducted using this licence (this also includes water course or drainage maintenance operations conducted by Assistants acting under their authority):

- Date badger sett interfered with;
- Type of water course or drainage maintenance operation; and
- Location (administrative area and a 6-figure Ordnance Survey grid reference).

Reporting

A report, detailing the information stipulated above, including 'nil' returns, must be sent by each Registered Person to Natural England Wildlife Licensing (at the address given above) for the reporting period 1 January to 31 December no later than 31 January of the following year.

The report template is available online:

<https://www.gov.uk/government/publications/badgers-licence-to-interfere-with-setts-for-drainage-purposes>

Commercial confidentiality

If you encounter difficulties releasing data due to client confidentiality restrictions then you are advised to remind your client that it is a condition of using this licence that licensing information is reported. Furthermore, the licence may only be used if this condition is met.

To help avoid such difficulties, it is recommended that your contractual terms and conditions make it clear that submitting records to Natural England and other bodies specified in licences is a legal requirement. If a client is not prepared to accept such terms and conditions then you may not use this licence without the **prior** permission of Natural England Wildlife Licensing.