

Annex A:

Draft Guidance to Natural England for consultation

Licences to kill or take badgers for the purpose of preventing the spread of bovine TB under section 10(2)(a) of the Protection of Badgers Act 1992

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Please Note: This draft guidance is written for the purposes of this consultation as if it were to be issued to Natural England. Its purpose at this stage is to enable consultees to comment on the details of how a policy of badger culling might be implemented. It provides an indication of what guidance to Natural England under section 15(2) of the Natural Environment and Rural Communities Act 2006 might look like if such a policy were to be adopted. However, a decision has not yet been taken on whether to proceed with a policy of badger culling and any guidance will only be issued if, following consultation, a decision is taken to proceed with such a policy.

Scope of this Guidance

1. This guidance is given by the Secretary of State to Natural England under section 15(2) of the Natural Environment and Rural Communities Act 2006 (NERC), and represents the Secretary of State's considered views, based on current scientific evidence, as to what is required in order for any cull of badgers to be effective, safe and humane. By virtue of section 15(6) of that Act it is guidance to which Natural England must have regard in discharging its functions. [The Secretary of State has consulted Natural England and the Environment Agency in accordance with section 15(3)(a) and (b) of that Act, and in accordance with section 15(3)(c) of that Act has consulted the persons listed in Annex A.]
2. Under section 78 of NERC the Secretary of State may enter into agreements to authorise designated bodies such as Natural England to carry out Defra functions. An agreement under section 78 of NERC was entered into with effect from 1 October 2006 authorising Natural England to carry out various Defra functions including those relating to licensing under the Protection of Badgers Act 1992 and the Wildlife and Countryside Act 1981.
3. This policy guidance relates only to licensing functions under section 10(2)(a) of the Protection of Badgers Act to kill or take badgers for the purpose of preventing the spread of bovine TB, and any associated licensing functions under section 16(3)(g) and (h) of the Wildlife and Countryside Act 1981 in relation to any activity that (in the absence of such a licence) would be prohibited under section 11 of that Act. Guidance for all other badger licensing is given in a separate document.
4. Bovine tuberculosis (TB) policy is devolved. With the exception of paragraph 32, this guidance relates to England only.

The Policy

5. The Government's policy is to allow controlled culling and vaccination of badgers in areas of high incidence of bovine TB in cattle in a carefully regulated way for the purpose of controlling the spread of the disease, in accordance with the requirements set out below.¹
6. The aim of culling is to deliver a reduction in confirmed new incidents of TB in cattle within control areas, comparable to the average benefit seen in proactively culled areas of the RBCT.² In order to offset the risk of an increase in confirmed new incidents of TB in cattle on land in the 2km ring surrounding a control area, the policy has been designed to provide a confidence that there will be a net overall benefit in terms of confirmed new incidents of TB in cattle in the control area and the 2km ring combined.³

¹ A policy statement will be published alongside this guidance if Government proceeds with a policy of badger control following this consultation.

² In proactively culled areas of the RBCT, from the first cull to 5 years after the last cull (i.e. up to July 2010) there was a 28.3% reduction (95% confidence interval: 20.9% decrease to 35.0% decrease) in TB confirmed cattle herd incidence in culling areas when compared with survey-only areas.

³ The minimum size of the culled area has been set to give 97.5% confidence of an overall beneficial effect over the culled area and surrounding 2km of land, based on calculations from the effect seen in the RBCT from the first cull until 3.5 years (42 months) after the last cull (Jenkins et al., 2010). Other licence criteria (such as minimum land access levels) have been set to be at least as stringent as those adopted in the RBCT.

7. The Government does not want to see culling continuing for any longer than necessary. Four years after the first culling licence has been granted, the Government will review the policy and advise Natural England whether further culling licences should be granted. Natural England should continue with normal licensing operations until it receives this advice. (Existing licences will remain valid for the term for which they were originally granted).
8. The aim of vaccination in combination with controlled culling is to mitigate the potential for disease spread in areas within or surrounding the control areas, where culling is not taking place. This could reduce the risk of badgers transmitting the disease to cattle and, over time, may reduce the prevalence of disease in the badger population.

Culling Policy Requirements

9. Applications for culling licences must meet the following **criteria**.
 - a. All participating farmers are complying, and for the duration of any licence will continue to comply, with current **statutory TB controls**.
 - b. Reasonable **biosecurity** measures are being, and for the duration of any licence will continue to be, implemented by participants on their land. For this purpose “reasonable measures” means measures that in the particular circumstances are practicable, proportionate and appropriate.
 - c. The application must cover an area of **at least 150km²**.
 - d. The area must be composed wholly of land within the **Parish Test Interval 1 (PTI 1)** area at the time of application (i.e. an area within which cattle are subject to annual testing for TB) ⁴.
 - e. There must be access for culling to at least **70% of the total land** area in the application.
 - f. The size and number of **inaccessible areas** within the application area should be minimised, with at least 90% of the land within the application area either accessible or within 200m of accessible land.
 - g. Applicants must **put in place reasonable measures to mitigate the risk to non-participating farmers and landowners** of a potential increase in confirmed new incidents of TB in vulnerable livestock within the control area and in the 2km ring surrounding the control area; and to protect the interests of any non-farming interests that may be affected by badger control. For this purpose “reasonable measures” means measures that in the particular circumstances are practicable, proportionate and appropriate. When assessing the reasonableness of measures, applicants and NE should take into account the cost of measures relative to the potential cost to non-participants of the anticipated increase in TB incidence.

⁴ For the purposes of this policy, land within the PTI1 area is considered to be located in a region where there is a recognised established reservoir of TB in badgers. Countries included are Cornwall, Devon, Somerset, Dorset, Gloucestershire, Wiltshire, Herefordshire, Worcestershire, Shropshire, Staffordshire and parts of Derbyshire and Warwickshire.

- h. Applicants and owners of land must **enter into agreements under section 7 of NERC** to permit access to their land for culling (including by Government). The agreement should be entered into by the freehold owners of at least 70% of the Control Area unless Natural England considers that the likelihood of accessible land falling below 70% as a result of the termination of any tenancy for any reason (see para 9e) is very low. This may depend on:
 - i. the margin of accessible land above the minimum of 70%;
 - ii. the proportion of accessible land where the freehold owner is not participating; and
 - iii. the length of the tenancies to which the accessible land is subject.
 - i. Applicants must have arrangements in place to **deposit sufficient funds** to cover the total cost of a four-year cull, plus a contingency sum, and this deposit must be made before culling begins.
10. Further, applicants must satisfy Natural England that they are able to deliver an **effective cull** in line with this policy and have arrangements in place to achieve this. To deliver an **effective cull**, the following requirements must be met.
- a. Culling must be **co-ordinated** on accessible land across the entire control area.
 - b. Culling must be **sustained**, which means it must be carried out annually (but not in closed seasons) for the duration of the licence (minimum of 4 years). The killing/taking of badgers will be limited to a six-week cull period specified in each licence and will not be permitted during the following **closed seasons**:
 - i. 1 December to 31 May for cage-trapping and shooting badgers;
 - ii. 1 February to 31 May for controlled shooting; and
 - iii. 1 December to 30 April for cage-trapping and vaccination
 - c. Culling must remove a minimum number of badgers in each year as specified below:
 - i. in the first year of culling, a **minimum number of badgers** must be removed during an **intensive cull** which must be carried out throughout the land to which there is access, **over a period of not more than six consecutive weeks**. This minimum number should be set at a level that in Natural England's judgement should **reduce the estimated badger population of the application area by at least 70%**;
 - ii. a **minimum number of badgers** must also be removed in subsequent years of culling through an intensive six-week cull which must be carried out throughout the land to which there is access. This minimum number should be set at a level that in Natural England's judgement should maintain the badger population at the reduced level required to be achieved through culling in the first year.
11. Further, applicants must satisfy Natural England that they are able to deliver the cull as safely and humanely as possible. The following requirements must be met in that respect.

- a. Those licensed to kill badgers must be able to demonstrate a level of **competence** appropriate to the method they will be licensed to use. Successful completion of a training course approved by Government will be taken as proof of competence.
 - b. Culling must be in line with the Best Practice Guidance.
 - c. In order to ensure humaneness, only two **culling methods** will be permitted (which can be used in combination, or as single control methods):
 - i. cage-trapping followed by shooting; and
 - ii. controlled shooting.
 - d. All badger carcasses must be disposed of in line with **Animal By-Products Regulation 1069/2009/EC**.
12. Natural England should aim to ensure that culling will “not be detrimental to the survival of the population concerned” within the meaning of Article 9 of the Bern Convention on the Conservation of European Wildlife and Natural Habitats, and for this purpose in considering applications for a licence should have regard to the guidance of the Standing Committee on the interpretation of Article 9 of that Convention. (The current guidance is dated 27 October 2010, document T-PVS/Inf (2010) 16). For that purpose Natural England should:
- a. determine appropriate area-specific licence conditions; and
 - b. set a maximum number of badgers to be removed from the licence area.
13. Further, Natural England should take into account conservation considerations for designated sites, for example Sites of Special Scientific Interest (SSSIs), Special Areas of Conservation (SACs), and Special Protection Areas (SPAs) sites. Under the Conservation of Habitats and Species Regulations 2010, (SI 2010/490), an “appropriate assessment” must be carried out before granting a licence which might have a significant effect on a **European protected site** (principally SACs & SPAs).⁵

Vaccination Policy Requirements

14. An injectable vaccine for badgers is available for use under veterinary prescription (called Badger BCG). Under existing legislation it is possible to apply to Natural England for a licence to trap badgers for the purpose of vaccination, provided the vaccinating will be carried out by someone who is sufficiently competent (either a trained and accredited lay vaccinator or a practising vet with access to personnel with adequate trapping experience). The ability to apply for licences to vaccinate badgers will continue and is not limited to parishes where cattle undergo annual testing for TB.

⁵ Where the assessment concludes that the grant of a licence might result in an adverse effect on the integrity of a European protected site, the licence must not be granted unless there are no alternative solutions and the rationale for the policy can be relied upon as an imperative reason of overriding public interest (pursuant to regulation 62(2) of those Regulations). Where the European protected site hosts habitat which for the purposes of the Habitats Directive is a priority habitat or a species which is a priority species, any such overriding public interest cannot be relied upon except pursuant to advice from the European Commission that it may be.

15. Vaccination can take place as the sole disease control measure, or it can be used in combination with culling, for example as a buffer for areas where vaccination may help reduce the risks to vulnerable livestock of increased TB incidence, both within and surrounding a control area, as a result of perturbation of the local badger population.
16. Where the use of vaccination in combination with culling is proposed, the following best practice is recommended:
 - a. where vaccination is to be used as a buffer, it should be used at active badger setts found on, or adjacent to, land where vulnerable livestock are present and which fall within 2km of the edge of a control area;
 - b. vaccination should take place at least 4 weeks prior to culling to allow immunity to develop in uninfected vaccinated animals;
 - c. to mitigate any ongoing perturbation effect and begin to build up “herd immunity”, vaccination should be carried out annually, continuing for at least the same length of time as any culling on adjacent land; and
 - d. where culling and vaccination are taking place on adjacent land, boundary cage-trapping (designed to cull badgers resident on inaccessible land) should be avoided.

Implementation

17. Natural England, on behalf of the Secretary of State, will determine applications for culling and vaccination licences on a case-by-case basis.
18. To enable Natural England to assess licence applications it will require applicants to submit a **Badger Control Plan** that demonstrates how they will meet the culling policy requirements, and includes details of contingency plans in case the chosen culling strategy proves ineffective.
19. A maximum of ten licences should be granted each year. The policy will be delivered through a measured roll-out, with a pilot in a maximum of two licensed areas initially in the first year. Culling in these areas will be closely monitored to ensure that this method is both effective and humane. The results of this monitoring will be examined by a panel of independent scientific experts who will advise the Secretary of State over whether further licences should be issued.
20. Prior to granting a culling licence, Natural England should be satisfied that the application meets the licence criteria and the policy requirements. If more than ten licence applications are submitted within an application window in any one year, then the ten which are judged by Natural England best to meet the primary aim of the policy (i.e. to control TB in cattle) will be considered for licensing in that year. The final selection will also take into account the need to avoid adversely impacting the conservation status of the badger population (see para 12).
21. Each culling licence will be granted for a period of not less than four consecutive years or such other period as Natural England may determine is appropriate to ensure that the proposed cull achieves the policy aim.

22. Natural England should give the public an opportunity to comment on the licence applications that are made.
23. Natural England should consider whether additional licence conditions are required to ensure public and operator safety.

Monitoring

24. As part of its licensing operation, Natural England should monitor compliance with licence conditions and agreements in place for culling and vaccination. The use of site visits will be in accordance with a risk-based approach that complies with Better Regulation principles and the Regulators' Code for Compliance.
25. Natural England should require culling licensees to submit regular reports (frequency and level of detail to be specified in licences) providing data on culling effort, numbers of badgers culled, method(s) used, date and location, and information on any non-target species caught and killed.

Reporting & Disclosure of Information

26. Natural England should disclose as much information as practically possible. Each year, or more frequently if appropriate, Natural England should, as a minimum, publish on its website the numbers of applications received and licences granted, and for each licence issued:
 - a. the county or counties included within the licensed area;
 - b. the size of the licensed area;
 - c. the number of badgers reported killed by each method; and
 - d. the number of non-target species caught and killed.
27. Individual requests for disclosure of information should be considered on a case by case basis in accordance with Natural England's statutory duties under the Freedom of Information Act (2000) and the Environmental Information Regulations (2004). Each request should be considered on its merits in the current circumstances, taking account of where the balance of public interest lies.
28. In cases where personal security could be compromised, or there is a risk of damage to property, information (such as names or addresses or other information through which the applicants/ licensees might be identified) will not generally be released. In addition where the disclosure of information could lead to the disruption of culling activities this information will also not generally be disclosed. This information may be released to the police or other relevant government authorities, if appropriate.

Enforcement

29. Natural England should apply its published Enforcement Policy Statement to breaches of licences that it has issued. Wildlife offences that are not breaches of licences may be reported to the police for investigation.
30. As required at paragraph 9h, culling licences issued under the Protection of Badgers Act should be supplemented with an agreement under section 7 of NERC between Natural England and the owners of land comprising at least 70% of the area. This will permit culling on the licensee's land by Government, should this prove necessary.
31. Government intervention will be considered where, in particular, in the judgement of the Secretary of State, any of the following circumstances apply:
 - a. where culling has not taken place at all during any year after the culling commenced in year one (applicants should detail in the Badger Control Plan the dates during which culling will be carried out);
 - b. where in any of the four years of culling the minimum number of badgers to be culled during the initial annual six-week intensive cull period (specified by Natural England for the year in question) is not attained;
 - c. where the area of accessible land in a control area has dropped below 70%;
 - d. where there has been any other breach of the licence which the licence holder has been asked to remedy and has failed to remedy within a reasonable period; or
 - e. where there is an Event of Default as defined in the section 7 agreement.

Welsh Border

32. Natural England and the Welsh Assembly Government should consider on a case-by-case basis any licence applications in respect of areas which cross the Welsh border. If an application relates to an area which is solely within England but within 2km of the border, Natural England should determine the licence application in the normal way but will consult the Welsh Assembly Government.

Glossary

Access/accessible land: land within a control area that is participating in the application and accessible for culling to take place

Application Area: land included in an application, including both access land and non-participating land.

Biosecurity measures: measures designed to reduce the risk of transmission of infectious disease.

Controlled shooting: the shooting of badgers in the field (as distinct from shooting those that have first been trapped in cages).

Control Area: land included in the licence, once granted, including both land that is participating and land that is not participating in culling.

Effective Cull: a cull that meets the requirements set out in paragraph 12.

Habitats Directive: Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna (OJ L 206, 22.7.1992. p.7).

Herd immunity: An epidemiological term that refers to the vaccination of sufficient susceptible individuals in a population as a means of protecting remaining susceptible, unvaccinated animals in that population from infection.

Non-participating land: land within a control area that is not participating and where access has not been permitted for culling to take place.

Proactively Culled Areas: Areas within the RBCT which were subjected to repeated (approximately annual) culling across all accessible/consent land.

PTI 1 Areas: Classification at the Parish level, according to AHVLA, to determine the frequency of testing cattle within these areas for TB. PTI 1 requires annual testing of all cattle within the Parish.

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