



Department
for Environment
Food & Rural Affairs

helpline@defra.gsi.gov.uk
www.defra.gov.uk

Our ref: RFI 5987
Date: 27th November 2013

Dear [REDACTED]

REQUEST FOR INFORMATION: BAD WEATHER DURING BADGER CULLS

Thank you for your request for information about bad weather and its impact on badger culls, which we received on 28 October. We have handled your request under the Environmental Information Regulations 2004 (EIRs).

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

Your questions and the responses are below:

1. What constitutes 'bad weather' with respect to the guidance?

And

2. Bearing in mind badgers may be held in traps until 12 noon the following day, the latest time the license states the operator must check traps by, over what time period would 'bad weather' be assessed? And how long would a suspension for bad weather be in force for?

And

3. Who decides when the weather is considered 'bad' enough for trapping to be suspended?

4. How is a decision to suspend trapping communicated to relevant parties?



And

5. How and by whom is the suspension of trapping in bad weather policed to ensure compliance?

Bad weather is identified as a combination of precipitation, high wind chill and low temperatures, and conditions are considered on a case by case process. There are no set criteria, as this depends in part on the location of the badger trap (which may for example affect how susceptible the badger is to wind chill and precipitation). The licensing authority i.e. Natural England (NE) will make the decision to suspend trapping based on advice that it may source from experts, including vets. Local weather reports are checked on a regular basis. NE staff are in daily contact with the cull company to review local conditions and operational matters. There are therefore well established procedures in place whereby NE can communicate rapidly with the cull company. A formal decision to suspend trapping across the whole cull area would need to be confirmed in writing via email.

Natural England observers continue to carry out visits to cull areas as appropriate or to assess conditions and ensure that trappers are complying with the Best Practice Guidance with respect to taking into account the weather conditions in making decisions about whether or not to activate traps.

6. If a member of the public finds a badger caught in a trap in what that person considers to be 'bad weather', and that there is in their opinion a risk that the badger could suffer from 'extreme exposure' as a result, is that person at liberty to release the badger from the trap, or would this constitute an offence?

Releasing a badger from a trap would constitute theft. This is because it would be a dishonest appropriation of the property of another with the intention permanently to deprive the other of it (see s.1 of the Theft Act 1968). An appropriation for this purpose is "an assumption of the right of the owner". The term "property" includes wild creatures; wild creatures can be stolen if they have been, or are in the course of being, reduced into possession; and property is to be regarded as belonging to any person who has possession or control of it (see sections 3(1), 4(4) and 5(1) of the Theft Act 1968). If the trap is damaged, an offence of criminal damage would also be committed.

Releasing a badger would also be trespass to goods. Additionally, unless the trap were placed on a public highway or the member of the public was authorised to be on the land, entry onto the land for the purpose of releasing a badger would be trespass to land.

In keeping with the spirit and effect of the EIRs, and in keeping with the Government's Transparency Agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on www.gov.uk together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

I also attach an annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact me.

Yours sincerely

Defra TB Programme

Email: ccu.correspondence@defra.gsi.gov.uk

Annex

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF