

**SCOTTISH
BADGER
COMMITTEE**



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A GUIDE TO LICENSING

The Badger – A Guide to Licensing

Law protects the badger and its sett and certain activities may require a licence. In essence, a licence empowers people to carry out actions that would otherwise be illegal, but these actions can only be undertaken under special circumstances and for specified purposes.

This guide sets out to explain that protection and when it is necessary to apply for a licence.

The Law

Badger and their setts are protected by the Protection of Badgers act 1992. This Act consolidates and replaces earlier legislation namely the Badger Act 1973, The Badger Act 1991 and the Badger Act (Further Protection) Act 1991.

Badgers are also listed under schedule 6 of the Wildlife and Countryside Act 1981 (as amended). Schedule 6 lists those “Animals that may not be Killed or Taken by Certain Methods” and this schedule refers to Section 11 of the Act that states the “Prohibition of certain methods of killing or taking wild animals”. In effect this means that it is an offence to take or kill a badger by the means listed under Section 11 (see offences).

They are also protected by the Protection of Animals (Scotland) Act 1912, The Wild Mammals (Protection) Act 1996 and included in Appendix III of the Bern Convention.

Offences

Under **The Protection of Badgers Act 1992** it is an offence to

- Wilfully kill, injure, take, possess or cruelly ill-treat a badger or attempt to do so.
- To interfere with a sett by damaging or destroying it.
- Obstruct access to, or any entrance of, a badger sett.

- Disturb a badger when it is occupying a sett.
- Causing a dog to enter a sett
- To sell a live badger, or offer one for sale or possess a live badger.

Under **The Wildlife and Countryside Act 1981 (as amended)** it is an offence to use any of the following methods to kill or take a badger.

- Set in position any self-locking snare, which is of such a nature, and so placed as to be calculated to cause bodily injury to any wild animal coming into contact therewith.
- Uses for the purpose of killing or taking any wild animal any self-locking snare whether or not of such a nature or so placed as aforesaid, any bow or crossbow or any explosive other than ammunition for a firearm.
- Uses a decoy, for the purposes of killing or taking any live mammal or bird whatever or
- Knowingly causes or permits to be done an act which is mentioned in the foregoing provisions of the section.
- Sets in position any of the following articles, being an article which is of such a nature and so placed as to be calculated to cause bodily injury to any wild animal included in Schedule 6 which comes into contact therewith, that is to say, any trap, or snare, any electrical device for killing or stunning or any poisonous, poisoned or stupefying substance.
- Uses for the purpose of killing or taking any such wild animal any such as article a aforesaid, whether or not of such a nature and so placed as aforesaid, or any net.
- Uses for the purpose of killing or taking any wild animal:-
 - (1) any automatic or semi-automatic weapon
 - (2) any device for illuminating a target or sighting device for night shooting
 - (3) any form of artificial light or any mirror or other dazzling device
 - (4) any gas or smoke not falling within paragraphs (a) or (b)

- Uses as a decoy, for the purpose of killing or taking any such wild animal, any sound recording.
- Uses any mechanically propelled vehicle in immediate pursuit of any wild animal for the purpose or driving, killing or taking that animal.
- Knowingly cause or permits to be done an act which is mentioned in the foregoing provisions of this subsection.
- Sets in position or knowingly causes to be set in position a snare which is of such a nature and so placed as to be calculated to cause bodily injury to any wild animal coming into contact therewith; and
- While the snare remains in position, without reasonable excuse, to inspect it, or cause it to be inspected, at least once every day.

General Exceptions

A person is not guilty of an offence under the Act by

- Taking or attempting to take a badger which has been disabled otherwise by his act and is taken or to be taken solely for the purpose of tending it.
- Kill or attempt to kill a seriously injured badger that to kill would be an act of mercy
- Unavoidable killing or injuring a badger as an incidental result of a lawful act.
- Doing anything which is authorised under the Animals (Scientific Procedures) Act 1986

Licensing

The Protection of Badgers Act 1992 provides Scottish Natural Heritage and The Scottish Office with the power to issue licences for a number of purposes that are otherwise illegal. The licensing responsibilities are as follows:-

Scottish Natural Heritage

- Science, education and conservation
- Zoological gardens and collections
- Ringing and marking
- Development
- Preservation of Ancient monuments or archaeological investigation
- Investigating whether any offence has been committed
- Interfere with a badger sett to control foxes or protect livestock, game or wildlife.

The Scottish Office

- Preventing the spread of disease
- Preventing serious damage to land, crops, poultry or property
- Agriculture or Forestry operations
- Drainage operations
- Interfere with a badger sett to control foxes to protect livestock, game or wildlife

Definition of a Badger Sett

A badger sett as defined under the Act means – “any structure or place which displays signs indicating current use by a badger”.

For the purposes of licensing, SNH define “current use” as **“any sett within an occupied badger territory regardless of when it may have been last used”**.

A sett therefor, in an occupied territory, is classified as in current use even if only used seasonally or occasionally by badgers and afforded the same protection in law.

Activities Not Normally Licensed

A considerable amount of badger conservation work is carried out by volunteers some of which does not require a license, such as.

- Monitoring or survey work where there is no intent to disturb.
- Badger watching.
- Rehabilitation. To tend an injured badger and release at or near the site where removed.

It should be noted that licences for the Investigation of Offences are issued to volunteers only in exceptional cases. There are two main reasons for this. The first is that the investigation of offences is normally a matter best dealt with by the police. This is because the investigation of offences require considerable training in the law, collection of evidence, taking statements and having power to stop and arrest. It should be noted that the SSPCA may also be involved in investigating offences as they have the power to report cases directly to the Procurator Fiscal. The second is that investigating offence can be dangerous and at no time should volunteers become involved but should withdraw from the situation and call the police.

Further advice and licence application forms can be obtained from SNH and SOAEFD at the following addresses.

Scottish Natural Heritage
Licensing Section
2 Anderson Place
Edinburgh
EH6 5NP

Tel. 0131 446 2460

The Scottish Office
Agriculture, Environment & Fisheries
Department
Pesticide & Agricultural Pollution
Branch
Pentland House
27 Robb's Loan
Edinburgh
EH14 1TY
Tel. 0131 244 6360

Further Reading and Advice

The Law and You, Scottish Natural Heritage, Battleby

Forest Operations and Badger Setts (1995), Forestry Commission, Edinburgh

Surveying Badgers, Mammal Society, Bristol.

Badger Persecution and the Law, Mammal Society, Bristol.

Project on Badgers, Mammal Society, Bristol

Problems with badgers?. RSPCA, Horsham, West Sussex.

Badgers (1996) Earnest Neal and Chris Cheeseman, A.D. Poyser.

Badgers on site, Berkshire County Council.

Scottish Badger Committee, c/o Secretary

National Federation of Badger Groups, Centre 8, Battersea Park Road,
London SW8 4BG

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