



Department
for Environment
Food & Rural Affairs

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Guidance to Natural England

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

17 December 2015

(Revised: reference corrected 6 January 2016)



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This guidance was revised on 6 January 2016. An incorrect reference in paragraph 7j, (on page 3) has been changed from “paragraph 9e” to “paragraph 7e”.

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 Act), and represents the Secretary of State’s considered views, based on current scientific evidence, about what is required for any cull of badgers for bovine tuberculosis (TB) control purposes to be effective, safe and humane.
2. Section 15(6) of the NERC Act requires Natural England to have regard to this Guidance 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 the Act and, in accordance with section 15(3)(c) of the Act, has also consulted more widely through a public consultation.¹
3. An agreement under section 78 of the NERC Act 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.
4. This 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 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.
5. TB policy is devolved. With the exception of paragraph 27, this guidance relates to England only.

¹ <https://www.gov.uk/government/consultations/bovine-tb-updating-the-criteria-for-badger-control-licence-applications>

The Policy

6. The Government's policy is to enable the licensed culling of badgers or vaccination of badgers for the purpose of controlling the spread of TB, as part of the Strategy for achieving Officially Bovine Tuberculosis Free status for England.²

Culling Policy Requirements

7. Applications for culling licences must meet the following **criteria**.
- a. All participating farmers are complying, and for the duration of any licence continue to comply, with **statutory TB controls**.
 - b. Reasonable **biosecurity** measures are being, and for the duration of any licence will continue to be, implemented by participating farmers on their land. For this purpose 'reasonable measures' means measures that in the particular circumstances are practicable, proportionate and appropriate, guided by the Bovine TB Biosecurity Five-Point Plan.³
 - c. The application must cover an area of at least 100km².⁴
 - d. The area must be composed of land wholly within the **High Risk** or **Edge Areas** at the time of application.⁵
 - e. The size and number of areas of **inaccessible land** within the application area should be minimised for the purposes of effective disease control, with approximately 90% of the land within the application area either accessible or within 200m of accessible land. The variance from 90% which will be accepted will be decided by Natural England on a case-by-case basis, taking into account such specific circumstances as Natural England considers relevant, e.g. topography, land use and badger sett surveys or any other matter that Natural England considers relevant. Natural England should have regard to any advice on the application from the UK Chief Veterinary Officer (CVO).

² The Strategy for achieving Officially Bovine Tuberculosis Free status for England, (PB 14088).
<https://www.gov.uk/government/publications/a-strategy-for-achieving-officially-bovine-tuberculosis-free-status-for-england>

³ <http://www.tbhub.co.uk/biosecurity/protect-your-herd-from-tb/>

⁴ See Footnote 1. Paragraphs 3.13 and 3.14 of the consultation explain the rationale for this area size.

⁵ These areas are currently subject to a minimum of annual herd testing.

- f. 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 culled area and in the 2km ring surrounding the culled area; and consider whether any measures are needed to protect the interests of any non-farming interests that may be affected by badger control.
- g. 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 Natural England should take into account the cost of measures relative to the potential cost to non-participants of the anticipated increase in TB incidence.
- h. Applicants must enter into an agreement with Natural England under section 13 of the NERC Act (the "Badger Control Deed of Agreement") requiring them to comply with the requirements contained in this guidance and any additional licence conditions for the purpose of ensuring that –
 - i. an effective cull is carried out each year for a minimum of four years; and
 - ii. the financial deposit (see paragraphs 7k and l) is sufficient and is managed appropriately.
- i. All land holders, unless the agreement states otherwise, must enter into agreements with Natural England under section 7 of the NERC Act (the "TB Management Agreement") requiring them to permit access to their land for culling (including by Government) and to take appropriate biosecurity measures (as required in paragraph 7b), and agreeing that Government can recover any additional costs of culling.
- j. Where land is tenanted, the freeholder owners (or landlords) must generally also sign an undertaking appended to this agreement agreeing to permit access to the land for culling (including by Government). Natural England may permit dispensations in certain cases, provided it considered that the likelihood of the total accessible land falling below an acceptable level (approximately 90% of the control area either accessible or within 200m of accessible land, see paragraph 7e above) as a result of the termination of any tenancy for any reason would still be very low. This may depend on:
 - i. the margin of accessible land above 90% that is accessible or within 200m of accessible land;
 - 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.

- k. Applicants must have arrangements in place to **deposit sufficient funds** in a reputable bank to cover the total cost of a four-year cull, plus a contingency sum of 25%. This deposit must be made before culling begins into an account held by the applicants. Applicants will need to provide evidence to support the cost estimates and confirmation from the bank that the deposit has been made.
 - l. The funds must be managed in line with the requirements set out in the Badger Control Deed of Agreement, including the requirement to ensure that at all times the amount remaining in the account is sufficient to ensure that culling is carried out in accordance with the licence and the Badger Control Deed of Agreement.
8. 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 must commence during the culling season, on or after the date specified by Natural England in its letter of authorisation, and will continue until Natural England requires it to cease in all or part of a control area. The duration of the cull needs to achieve a balance between sufficient intensity to achieve effective disease control and what is realistically deliverable by a cull company.
 - c. Culling 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.
 - d. 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, until the licensee is notified by Natural England that culling should be discontinued for the remainder of the culling season. 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 period of culling carried out throughout the land to which there is access, until the licensee is notified

by Natural England that culling should be discontinued for the remainder of the culling season. 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.

9. 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. In order to ensure humaneness, only two **culling methods** will be permitted (which can be used in combination, or alone):
 - i. cage-trapping followed by shooting; and
 - ii. controlled shooting of free-ranging badgers ('controlled shooting').
 - b. 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.
 - c. Culling must be in line with the relevant Best Practice Guidance.
10. 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 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. 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.

Defra considers that this approach is sufficient to be confident that culling will not be detrimental to the survival of the relevant population of badgers.

11. 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). 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).⁶

⁶ 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

Vaccination Policy Requirements

12. It is possible to apply to Natural England for a licence to trap badgers for the purpose of TB vaccination. The vaccine may only be used under veterinary prescription. Vaccination must be carried out either by someone who is sufficiently competent (either a trained and accredited lay vaccinator or by a practising vet with access to personnel with adequate trapping experience).
13. Vaccination may be used independently of culling as part of a package of measures to prevent or control TB, or it may 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.
14. 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, applicants should take reasonable steps to negotiate an agreed approach to badger control operations along the relevant boundary with that landowner/occupier.

Implementation

15. Prior to granting a culling licence, Natural England should be satisfied that the application meets the licence criteria and the policy requirements. Natural England, on behalf of the Secretary of State, will determine applications for culling and vaccination licences on a case-by-case basis.

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.

16. To enable Natural England to assess licence applications it will require applicants to demonstrate how they will meet the culling policy requirements, including details of contingency plans in case the chosen culling strategy proves ineffective.
17. Natural England should keep the duration of a cull in each year under review. The review will allow Natural England discretion whether or not to take action to terminate operations on a case-by-case basis. It might take into account such factors as: the CVO's advice on disease control; the latest evidence and advice on the remaining badger population; and whether any immediate action is appropriate.
18. In exercising this discretion, Natural England should take into account the extent to which the licensee's annual operational planning is being complied with and the licensing criteria continue to be met (for example, whether the extent of access has been reduced since the grant of the licence) and, if so, whether this is likely to affect adversely the effectiveness of operations in reducing badger numbers.
19. A maximum of ten new cull areas may be licensed each year unless there are compelling reasons to increase or decrease that number. Applications will be prioritised according to the extent to which they best meet the primary aim of the policy (i.e. to eradicate TB).
20. 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.
21. Natural England should give the public an opportunity to comment on the licence applications that are made.
22. Natural England will seek advice from local police forces on whether additional licence conditions are required to protect public and operator safety.

Monitoring

23. 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. Natural England should maintain sufficient oversight of the progress of each cull area to ensure that removal of badgers is consistent with that set out in operational planning, allowing cull companies to manage flexibly their resources and approach to deal with changing circumstances. Natural England should be ready to advise the CVO on progress at regular intervals, reporting on effort across each cull area, progress with badger removal and compliance issues.

Reporting and Disclosure of Information

24. 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.

Enforcement

25. 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.
26. 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 operational planning 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 annual 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 the acceptable level (approximately 90% of the control area either accessible or within 200m of accessible land);
 - 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 13 agreement (Badger Control Deed of Agreement).

Welsh Border

27. Natural England and the Welsh 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 Government.

Glossary

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

Applicants: those persons named as the applicant(s) on the licence application.

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 free-ranging 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.

Edge Area: one of the three geographical TB management zones defined in the Strategy for achieving Officially Bovine Tuberculosis Free status for England.

Effective Cull: a cull that meets the requirements set out in paragraph 8.

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 here to the protection of sufficient susceptible individuals through vaccination in a population as a means of protecting remaining susceptible, unvaccinated animals in that population from infection.

High Risk Area: one of the three geographical TB management zones defined in the Strategy for achieving Officially Bovine Tuberculosis Free status for England.

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

Participating farmers: all freehold owners and tenants of accessible land who are in occupation of that land and have signed the TB Management Agreement.