

Bovine TB and Badger Control:

Consultation on Guidance to Natural England on the implementation and enforcement of a badger control policy

July 2011

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Introduction

1. Bovine TB is a pressing animal health problem and the Coalition Government has committed, as part of a package of measures, to develop affordable options for a carefully-managed and science-led policy of badger control in areas with high and persistent levels of bovine TB.
2. The consultation document we published in September 2010¹ set out the case for tackling the reservoir of bovine TB in badgers and put forward a proposed policy of issuing licences to farmers/landowners to enable them to cull and/or vaccinate badgers subject to strict licence conditions, and at their own expense.
3. There remains a compelling case for badger control as part of a package of measures to tackle TB in cattle, which is backed by clear scientific evidence and robust veterinary advice. But we need to ensure that we can address a number of important issues that were raised during the public consultation before a decision is made on whether or not to proceed with the proposed policy.
4. This document explains the changes that have been made to the proposal in response to issues raised in the public consultation, and seeks views on the revised proposal, as articulated in draft Guidance to Natural England (Annex A).
5. If culling is to be permitted, Defra will issue guidance to Natural England under section 15(2) of the Natural Environment and Rural Communities Act 2006 (the “NERC Act”). This guidance will set out how Natural England should exercise its function to issue licences 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.
6. The NERC Act requires Defra to consult Natural England and the Environment Agency on this guidance before it is issued, as well as any other persons the Secretary of State considers appropriate.
7. This is not a further consultation on the proposed policy generally, but instead an opportunity for key stakeholders to comment on the draft guidance. A list of those stakeholders invited to respond to this consultation is attached at Annex B. We will consider comments received alongside responses to the 2010 public consultation before taking a decision on whether to proceed with the proposed policy. We expect this decision to be made in autumn 2011.

¹ The consultation document “Bovine Tuberculosis: The Government’s approach to tackling the disease and consultation on a badger control policy” is available at: <http://archive.defra.gov.uk/corporate/consult/tb-control-measures/index.htm>. This contains a detailed explanation of the scientific evidence on badger control.

The Consultation Proposal

8. In the 2010 consultation document we proposed that licences would be issued under the Protection of Badgers Act 1992 and the Wildlife and Countryside Act 1981 to enable farmers and/or landowners to cull badgers for the purpose of preventing the spread of bovine TB in cattle. Licences to trap and vaccinate badgers would also continue to be available. Applicants would have to demonstrate that they meet strict criteria in order to obtain a licence to cull, or cull and vaccinate badgers in combination. The Government would take responsibility for monitoring the effectiveness, humaneness and impact of this badger control policy.

Responses to the public consultation

9. We received over 59,000 responses to the public consultation. A summary of the responses received is available on Defra's website. The main issues and concerns raised during the public consultation in relation to the operation of a badger cull were:
- a) concerns that ineffective or incomplete culling could make TB worse and that culling licences would not be enforceable;
 - b) requests for the inclusion of a requirement for 'simultaneous' culling and for a definition of 'simultaneous';
 - c) mixed views on allowing the shooting of badgers in the field as a culling method (referred to in this consultation paper as "controlled shooting"), in addition to the shooting of cage-trapped badgers, and concerns about the effectiveness and humaneness of the former method;
 - d) concern about the risk of negative impacts on non-participating farmers and landowners with vulnerable livestock within and at the edge of the Control Area;
 - e) concerns over security and personal safety for those participating and for the general public;
 - f) queries and uncertainty about the impact of culling on the badger population;
 - g) questions about whether there will be sufficient resources to carry out adequate monitoring; and
 - h) agreement that the Government should do more to support and encourage the use of badger vaccination.

Addressing the issues raised

10. Having carefully considered the large number of responses to the public consultation, we remain strongly minded to proceed with a policy of badger control as part of a package of measures to address bovine TB.
11. A farmer-led approach remains our preferred option, to empower farmers to act under licence to take control of the wildlife reservoir of disease at the local level and decide for themselves which of the approved control measures to use. This approach also means that farmers, rather than taxpayers, will pay the costs of these additional disease-control measures. Government would pay for the licensing operation and monitoring.
12. To take account of issues raised in the responses to the 2010 consultation we have made a number of changes to the original proposal. The following sections describe how we have sought to address each of the areas of concern, and an updated cost-benefit analysis has been published at Annex C. The revised policy proposal is articulated in draft statutory guidance to Natural England and we have posed specific questions on the criteria in the guidance at the end of this document.

Ensuring effective, industry-led culling

13. Responses to the consultation highlighted the importance of ensuring that culling over the entire area is carried out effectively for at least four years, noting that without an effective, sustained cull, there is a risk of increasing the net incidence of TB in cattle across the Control Area and 2km surrounding ring (caused by perturbation of badgers' social groups and increased disease transmission).
14. The policy proposal has been developed further in light of the consultation responses and the draft guidance sets out in greater detail (at paragraphs 9-11) how applicants would be expected to deliver an effective cull and demonstrate their capacity to do so. The specific requirements include:
 - co-ordinating activity across the entire area;
 - sustaining culling annually for at least four years;
 - reducing the total badger population in the Control Area by 70% overall during a six-week intensive cull and maintaining this reduction in each subsequent year of culling; and
 - minimising areas of inaccessible land within the Control Area, through a requirement that 90% of land within the application area is either accessible or within 200m of accessible land.

Before a licence is granted, participants will be required to submit to Natural England a Badger Control Plan detailing how badger control activity will be co-ordinated, carried out

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and funded, as well as providing information on the biosecurity measures in place on farms. Further guidance on the information to be included in a Badger Control Plan is at Annex D and a draft of Natural England's guidance to applicants on biosecurity measures is at Annex E.

15. Responses to the 2010 consultation also questioned how Government would ensure an effective cull should the monitoring show that it was not being delivered in accordance with the licence conditions.
16. The draft Guidance to Natural England outlines a model which will ensure that Government is able to take robust enforcement action to ensure that once culling starts it is completed effectively.
17. We propose that all participants would be required to enter into agreements with Natural England under section 7 of the NERC Act. These 'section 7 agreements', called 'TB Management Agreements' would set out the participants' obligations once a licence was granted, and if necessary as a last resort allow Government to intervene, access all participating land, take over responsibility for a culling operation, and recover the costs from the participants, should the participants fail to meet the conditions of the licence. In the case of a tenant farmer, the agreement would normally need to be entered into by the farmer's landlord (to ensure that access to land is available to complete the cull if there is a change in tenancy) 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 is very low. A draft TB Management Agreement accompanies the guidance at Annex F.
18. Participants would also be required to deposit sufficient funds to cover the total expected cost of the four-year cull (plus a contingency sum) before culling begins. Government would be able to access these funds in the event that it needed to intervene and assume responsibility for a culling operation, and be able to levy additional funds from the original participants should that be necessary. Details of the circumstances in which Government would be likely to intervene are set out in paragraph 31 of the draft guidance.
19. Strong organisation and co-ordination will be required if applicants are to demonstrate that they are able to deliver an effective cull, meet the requirements of a TB Management Agreement and deposit sufficient funds to cover the cost of the cull. It will be for applicants in each Control Area to decide how best to do this, but the mechanism may include forming "companies limited by guarantee" in order to manage the cull.

The need for ‘simultaneous’ culling

20. In response to the consultation, some stakeholders noted that the policy proposal in the consultation document did not explicitly require culling activity to be carried out ‘simultaneously’ across an area. The evidence on the need to cull simultaneously across an area comes from the Randomised Badger Culling Trial (RBCT)², in which, on the majority of occasions, culls were carried out over a period of between 8 and 11 nights.
21. Responses from industry also noted that the need to achieve a high level of badger removal in a short timescale over a large area could be a constraint on the practical delivery of a badger control policy as it has implications for the level of resource required, the organisation needed and safety.
22. Advice on the consultation from a Joint Group of Defra’s Science Advisory Council and Bovine Tuberculosis Science Advisory Body (“the Joint Group”) included consideration of the strength of the evidence that supports the requirement for culling to be carried out ‘simultaneously’. Balancing the limited evidence with the need to avoid the negative effects of perturbation and develop a deliverable policy, the Joint Group’s expert opinion was that, if culling was carried out over a period of no more than six weeks, this was likely to reduce the risk of adverse effects of non-simultaneous culling seen in the RBCT.
23. We agree that it should be a condition of the licence for culling to be carried out simultaneously across an area. The draft guidance to Natural England defines ‘simultaneously’ as a requirement to remove at least 70% of badgers from the Control Area over a period of no more than six weeks, on the basis of the expert opinion given by the Joint Group.

Controlled Shooting

24. The consultation proposed that two culling methods should be permitted: controlled shooting of badgers in the field and the shooting of badgers that have first been trapped in cages. Controlled shooting in the field (including at night) is a method which is used widely and considered humane for culling a range of other mammals (including deer, foxes and rabbits), but responses to the consultation questioned whether controlled shooting is an effective and humane method for culling badgers, and raised concerns about operator and public safety. We propose to address these concerns through a pilot of controlled shooting, adequate training, best practice guidelines and careful monitoring. (Further discussion of operator and public safety is included below at paragraph 32.)
25. Operators would be required to demonstrate competence and attend an approved training course in order to obtain a licence to carry out culling by controlled shooting. Training would comprise attendance at a Government-approved course for persons who already hold a

² The Randomised Badger Culling Trial (RBCT) was a £50m Government-funded scientific study between 1998 and 2006 which showed that culling can reduce TB in cattle, provided it is done in a certain way.

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Deer Stalking Certificate or equivalent (which assesses marksmanship). This badger-specific course would include training to cover anatomical and behavioural characteristics of badgers and how these differ from those of other species. Additional marksmanship training and assessment would be required for those who may have experience but no formal qualification.

26. The farming industry would be expected to design, organise and deliver these training courses, and Defra would appoint independent auditors to ensure that standards are met and maintained. The licence conditions would also require all operators to adhere to Best Practice Guidance issued by Defra/Natural England. A draft of this guidance is attached at Annex G.
27. We are confident that controlled shooting is an effective and humane shooting method given its widespread use in other species, and that the further measures outlined above will ensure this. However, in the light of the concerns that have been raised, we propose to take a precautionary approach through a pilot of the policy; initially licensing two areas in the first year, which will be closely monitored to ensure that this method is both effective and humane. The results of the monitoring in these areas will be examined by a panel of independent scientific experts. If controlled shooting is found to be effective and humane by this independent panel, then and only then would the policy be rolled out more widely. Monitoring would continue throughout the culling period in all licensed areas to ensure standards are maintained (see paragraphs 38-42 below).

Mitigating the risk of detrimental impacts on non-participants

28. The public consultation document proposed that applicants would be required to consider adopting measures to mitigate the impact on non-participating farmers within the Control Area and that “where possible” the Control Area would have boundaries or buffers to mitigate any potential harmful effects in the surrounding areas (thought to be caused by perturbation of badgers’ social groups and increased disease transmission).
29. We have decided that we should be clearer about this requirement. Therefore, we propose that participants will be required to take reasonable measures to minimise the risk of potential negative effects on:
- (i) non-participating farmers and landowners with vulnerable livestock within the Control Area and in the surrounding 2km ring (for example, by putting in place mitigating measures around the boundary); and
 - (ii) any non-farming interests that may be affected by badger control (for example, local residents or nature reserves).

For this purpose “reasonable measures” means measures that in the particular circumstances are practicable, proportionate and appropriate.

30. Natural England would provide guidance to applicants on the measures that could reasonably be expected to be taken. For the purpose of determining what measures are required, Natural England will consider the extent of the risk of the perturbation effect and the financial implications for non-participants (so far as they can be estimated) relative to the cost of measures which might be taken to mitigate the risk to non-participating farmers/landowners. A draft of this guidance to applicants is included at Annex H.
31. We recognise that those potentially affected by culling may have views on an application for a licence to cull badgers. Therefore, the licence application process will also include a 28-day 'opportunity to comment' for each application. This will be publicised via the Natural England website and notification in local newspapers. Interested local organisations will also be informed about a licence application and offered an opportunity to comment. The purpose of this opportunity will be to seek comments on the specific application only, not on the wider policy of badger control.

Safety and security

32. A key issue raised in the public consultation was how we would address both public safety and the safety of those participating in a cull. The potential risks are likely to take the form of risks to personal security, risks of damage to property and disruption of culling activities. The proposed policy includes a number of elements which aim to ensure the security and safety of those licensed to carry out a cull, as well as the safety of the general public:
- To address public safety all those carrying out controlled shooting or cage-trapping and shooting would be required to attend relevant training, demonstrate competence, and adhere to Best Practice Guidance to ensure that the highest standards of safety are maintained;
 - Those operators undertaking culling activities under licence have the right to do so without fear or intimidation and therefore the names of those taking part in a culling operation and the dates on which they intend to undertake the annual six-week intensive operation are unlikely to be made public³; and
 - Licence conditions would include measures to minimise the risk to public safety, e.g. not permitting controlled shooting close to villages or towns, and setting certain conditions when shooting near public rights of way.

³ Individual requests for disclosure of information will 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). 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/ licencees might be identified) is unlikely to be released. In addition where the disclosure of information could lead to the disruption of culling activities this information is also unlikely to be disclosed.

Impact on the badger population

33. A number of responses to the consultation noted that badgers are a protected species under the Convention on the Conservation of European Wildlife and Natural Habitats (known as the Bern Convention). The Convention is binding on the UK in international law. Article 9 of the Convention allows parties to make exceptions to the requirement to take appropriate legislative and administrative measures to ensure the protection of badgers for various purposes. These include the prevention of serious damage to livestock, but only provided the exception will not be detrimental to the survival of the population concerned.
34. To limit the impact of the policy on badger populations, we propose to limit both the number of licences that may be granted in any one year and the number of badgers that may be removed in each licensed area.
35. The number of licences to be granted each year will be limited to ten (with a maximum of two granted initially in the first year in order to confirm the effectiveness and humaneness of controlled shooting), unless there are compelling reasons to increase or decrease that number. The proposed criteria for selecting these ten are outlined in paragraph 19 of the draft guidance.
36. The draft guidance states that a minimum number of badgers must be removed in the first year. This minimum number will be set at a level that in Natural England's judgement will remove at least 70% of the badgers in the Control Area. The badger population must then be maintained at this level in each subsequent year of culling while ensuring that culling is not detrimental to the survival of the badger population concerned. The licence will specify the maximum number of badgers that may be removed from the Control Area each year.
37. Defra will also commission independent monitoring that will assess annually badger activity in each licensed area. If badger activity is found to be very low, mitigation measures can be put in place so to ensure there is no local disappearance in any licensed area (e.g. stopping activity under the licence for the remainder of that year, or stipulating areas of land where culling would not be permitted).

Monitoring

38. One of the main concerns raised in response to the public consultation was that sufficient resources might not be made available to carry out adequate monitoring. If a decision is taken to proceed with a policy of badger control, Defra will be committed to providing sufficient resource for the licensing and monitoring of the policy. There will be four components to this monitoring:

Monitoring compliance with licence conditions

39. Licensees will be required to submit information to Natural England reporting on action taken under the licence. These reports would be submitted annually (at the end of the six-week culling period) but returns in the first year would be more frequent. They would need to contain data on the numbers of badgers culled, the method used, the date and location of the cull, and information on any non-target species affected. Natural England would also undertake site visits to check compliance with licence conditions. This operational monitoring would also contribute to assessing humaneness and the impact on badger populations in licensed areas (see below).

Changes in incidence of TB in cattle

40. The incidence of bovine TB in cattle is already routinely monitored. Cattle TB incidence data will be compared both to historical incidence within culled areas and to similar uncultured areas to identify any changes in trends that might be attributable to badger control.

Impacts on the badger population

41. In order to comply with the requirements of the Bern Convention, culling must not be detrimental to the survival of the badger population, and the means of culling must not be such as to cause the local disappearance of the badger population in England. Therefore badger activity in the Control Areas will be monitored, to enable action to be taken if there are signs that a local population might be at risk (e.g. stopping culling activity under the licence for the remainder of that season).

Humaneness of culling methods

42. We are proposing to permit only two culling methods (controlled shooting and cage-trapping and shooting) on the basis that they are both considered to be humane. Other culling methods such as gassing will not be permitted. We intend to monitor both methods, initially and throughout the culling period, to ensure standards are maintained. This monitoring will be carried out through veterinary assessment based on field observations (carried out by a vet and field assistant) and post-mortem examination of a sample of carcasses to establish humaneness. If as a result of the monitoring, there are any concerns about the way the methods are being applied in practice, we would consider the introduction of additional safeguards.

43. Natural England will monitor compliance with the licence conditions. For the other three monitoring components, Defra will commission impartial monitoring that will be independently audited to provide assurance.

Supporting and encouraging badger vaccination

44. The 2010 consultation document recognised the valuable role badger vaccination could play in tackling disease as part of a wider package of measures. It also recognised that, for some farmers and landowners, using vaccination may be the preferred option for tackling bovine TB in badgers. But given its early stage in deployment, the lack of available evidence on the effects on bovine TB in cattle and the time it takes to build herd immunity, most farmers and landowners are unlikely to feel sufficiently confident in using vaccination. In addition, using the existing licensed injectable vaccine is comparatively impractical and costly, which is likely to be a powerful disincentive to its use.
45. There was strong support for the use of vaccination in the responses to the consultation, in particular that Government should do more to support and encourage its use. We continue to see an important role for vaccination in the future and remain committed to encouraging its use where appropriate. The draft Guidance to Natural England recommends best practice for licence holders to consider if they propose to use vaccination in combination with culling.
46. To demonstrate the Government's ongoing commitment to vaccination Defra is continuing to fund the Badger Vaccine Deployment Project. We also intend to make available up to £250,000 a year of new funding to support farmers and landowners who plan to vaccinate badgers. The first grants would be available to support any vaccination taking place from 2012. More details on how to apply for funding will be published shortly.

Consultation Questions

47. We would welcome views on the following questions, which relate specifically to the draft Guidance to Natural England at Annex A and reflect the changes that have been made to the proposal since the 2010 public consultation.

- a) Do you agree that the basic culling policy requirements set out in paragraphs 9a-9f and paragraph 10 of the draft Guidance form the basis for an 'effective cull'?
- b) Paragraph 9g of the draft Guidance requires applicants to take reasonable measures to mitigate the potential risk to non-participants. Do you agree that the mitigation methods proposed in the draft guidance to applicants at Annex H are appropriate and adequate?
- c) Are the requirements at paragraphs 9h and 9i of the draft Guidance for all participants to enter into a TB Management Agreement (under section 7 of the NERC Act) and deposit the total cost of the funds upfront proportionate and appropriate to ensure that culling will be delivered effectively?
- d) Are the measures included at paragraph 11 of the draft Guidance, in addition to the proposed monitoring described above (at paragraphs 42-43), adequate and appropriate for ensuring that controlled shooting is carried out safely and humanely?
- e) Do you consider that the measures at paragraph 12 of the draft Guidance and the proposed monitoring described above (at paragraph 41), are appropriate to address concerns about the impact on the badger population?
- f) Do you agree that the measures included at paragraphs 11a-c, 23 and 27-28 of the draft Guidance are sufficient to mitigate the risks to the safety and security of those carrying out a cull and to the general public?
- g) Do you have any other comments on the draft Guidance to Natural England? Please refer to the specific paragraph number(s) in your response.

How to respond

48. The deadline for responses to this consultation is Tuesday 20th September 2011. Responses received after the deadline will not be considered. You can submit your response by email to tbcc@defra.gsi.gov.uk, or post to TBCC, Defra, 17 Smith Square, London SW1P 3JR. We will not acknowledge responses unless specifically requested to do so.
49. Once the consultation has ended, a copy of the responses will be made publicly available in the Defra Library at Ergon House, London. Members of the public may also request a copy of the responses under the Freedom of Information Act.
50. If you do not want your response to be publicly available, please say so clearly in writing when submitting your response. Please note: automatic confidentiality disclaimer will not be considered a confidentiality request for this purpose.
51. Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under Freedom of Information legislation. But, because of the law, we cannot promise that we will always be able to keep those details confidential.

Next Steps

52. We will consider comments received alongside the responses to the 2010 public consultation before taking a decision on whether to proceed with a badger control policy. We expect this decision to be made in autumn 2011.
53. Should we decide to proceed with a policy of badger control, we would not want to see culling continuing for any longer than necessary. Therefore, four years after the first culling licence was issued, we would review the policy and advise Natural England whether new culling licences should be granted.

List of Annexes

- A Draft statutory Guidance to Natural England
- B Organisations invited to respond to the Consultation
- C Updated cost-benefit analysis
- D Natural England's draft guidance to applicants on completion of a Badger Control Plan
- E Natural England's draft guidance to applicants on reasonable and practical biosecurity measures
- F Example of a TB Management Agreement
- G Draft Best Practice Guidance on controlled shooting in the field, and cage-trapping and despatch of badgers, under licence to prevent the spread of Bovine TB in cattle
- H Natural England's draft guidance to applicants on reasonable measures to reduce the risk of detrimental impacts on non-participants