

## 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

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### Contents

Scope of this Guidance .....	2
The Policy .....	3
Culling Policy Requirements .....	4
Vaccination Policy Requirements.....	7
Implementation .....	7
Monitoring .....	8
Reporting & Disclosure of Information .....	8
Enforcement.....	9
Welsh Border .....	9
Glossary.....	10

## 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 31, 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.<sup>1</sup>
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.<sup>2</sup> 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 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.<sup>3</sup>
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.

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<sup>1</sup> The rationale for the policy is explained in "Bovine TB and Badger Control: Policy Statement" available at [www.defra.gov.uk/animal-diseases/a-z/bovine-tb/badgers/](http://www.defra.gov.uk/animal-diseases/a-z/bovine-tb/badgers/).

<sup>2</sup> 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.

<sup>3</sup> 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.

# 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 participating farmers 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 150km<sup>2</sup>**.
- d. The area must be composed wholly of land within an **annual routine TB testing area** at the time of application (i.e. an area within which cattle are subject to annual testing for TB) <sup>4</sup>.
- 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 areas of **inaccessible land** 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 culled area and in the 2km ring surrounding the culled 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 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 Agreement”) requiring them to comply with the requirements contained in this guidance and any additional licence conditions for the purpose of ensuring that –
  - an effective cull is carried out each year for a minimum of four years; and
  - the financial deposit (see paragraph 9j) 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

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<sup>4</sup> For the purposes of this policy, regions where there is a recognised established reservoir of TB in badgers are considered to be on land within the extensive annual routine TB testing area.

Government) and to take appropriate biosecurity measures (as required in paragraph 9b), and agreeing that Government can recover any additional costs of culling.

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 considers that the likelihood of the total accessible land falling below 70% as a result of the termination of any tenancy (for any reason) remains very low. Any such consideration is expected to take into account:

- 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.
- j. 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%. (The level of the contingency sum will be reviewed after the first year of culling in the two pilot areas). 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.

The funds must be managed in line with the requirements set out in the Badger Control 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 Agreement.

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 must be limited to a six-week cull period specified in each licence. 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.
- 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. 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.
    - 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 Best Practice Guidance.
    - 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.
- Defra considers that this approach, together with the general safeguards within the policy to avoid culling being detrimental to the survival of the badger population in licensed areas, is sufficient to be confident that culling will not be detrimental to the survival of the relevant population of badgers.
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).<sup>5</sup>

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<sup>5</sup> 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

## Vaccination Policy Requirements

14. An injectable vaccine for badgers is available for use under veterinary prescription (called BadgerBCG). 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 areas where cattle undergo annual testing for TB.
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, applicants should take reasonable steps to negotiate an agreed approach to badger control operations along the relevant boundary with that landowner/occupier.

## Implementation

17. 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.
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.

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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.

19. A maximum of ten licences may be granted each year. Applications will be prioritised according to the extent to which they best meet the primary aim of the policy (i.e. to control TB in cattle).
20. The policy will be delivered through a measured roll-out, with a pilot in a maximum of two licensed areas initially in order to confirm the effectiveness, humaneness and safety of controlled shooting. The six-week period of culling in these areas will be monitored closely, with further licences granted (in relation to other areas) provided this initial phase is successfully concluded and any conclusions from the pilot can be adequately addressed. Should the results of the pilot highlight an issue with controlled shooting (whether its effectiveness, humaneness or safety), Defra will consider how this should be addressed (for example, by amending or tightening the requirements in the Best Practice Guidance or training). If necessary, Defra will advise Natural England that the licence conditions for the pilot areas should be amended to permit only cage-trapping and shooting and will review whether controlled shooting should continue to be an approved culling method.
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 will seek advice from local police forces on whether additional licence conditions are required to protect 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, personal information (such as names or addresses ) 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. 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 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 13 agreement.

## **Welsh Border**

31. 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 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 10.

**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.

**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.

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

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