



Protection of Badgers Act 1992

1992 CHAPTER 51

Exceptions and licences

6 General exceptions.

A person is not guilty of an offence under this Act by reason only of—

- (a) taking or attempting to take a badger which has been disabled otherwise than by his [^{F1}unlawful] act and is taken or to be taken solely for the purpose of tending it [^{F2}and releasing it when no longer disabled];
- (b) killing or attempting to kill a badger which [^{F3}appears to be so seriously injured or in such a condition that to kill it would be an act of mercy][^{F3}has been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of it recovering];
- (c) unavoidably killing or injuring a badger as an incidental result of a lawful action;
- (d) doing anything which is authorised under the ^{M1}Animals (Scientific Procedures) Act 1986.

Textual Amendments

- F1** Word in S. 6(a) inserted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\), s. 59\(2\), Sch. 6 para. 26\(4\)\(a\)\(i\)](#); S.S.I. 2004/407, art. 2(b)
- F2** Words in S. 6(a) inserted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\), s. 59\(2\), Sch. 6 para. 26\(4\)\(a\)\(ii\)](#); S.S.I. 2004/407, art. 2(b)
- F3** Words in S. 6(b) substituted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\), s. 59\(2\), Sch. 6 para. 26\(4\)\(b\)](#); S.S.I. 2004/407, art. 2(b)

Marginal Citations

- M1** 1986 c. 14.

Status: Point in time view as at 29/06/2011.

Changes to legislation: There are currently no known outstanding effects for the Protection of Badgers Act 1992, Cross Heading: Exceptions and licences. (See end of Document for details)

7 Exceptions from s. 1.

- (1) Subject to subsection (2) below, a person is not guilty of an offence under section 1(1) above by reason of—
 - (a) killing or taking, or attempting to kill or take, a badger; or
 - (b) injuring a badger in the course of taking it or attempting to kill or take it, if he shows that his action was necessary for the purpose of preventing serious damage to land, crops, poultry or any other form of property.
- (2) The defence provided by subsection (1) above does not apply in relation to any action taken at any time if it had become apparent, before that time, that the action would prove necessary for the purpose there mentioned and either—
 - (a) a licence under section 10 below authorising that action had not been applied for as soon as reasonably practicable after that fact had become apparent; or
 - (b) an application for such a licence had been determined.

8 Exceptions from s. 3.

- (1) Subject to subsection (2) below, a person is not guilty of an offence under section [F43][F4 3(1) or (2)] above if he shows that his action was necessary for the purpose of preventing serious damage to land, crops, poultry or any other form of property.
- (2) Subsection (2) of section 7 above applies to the defence in subsection (1) above as it applies to the defence in subsection (1) of that section.
- (3) A person is not guilty of an offence under section [F53(a)][F53(1)(a)], (c) or (e) above [F6 or an offence under section 3(2) above relating to an offence under section 3(1) (a), (c) or (e) above]if he shows that his action was the incidental result of a lawful operation and could not reasonably have been avoided.
- [F7(4) [F8A person is not guilty of an offence under section 3(a), (c) or (e) above by reason of obstructing any entrance of a badger sett for the purpose of hunting foxes with hounds if he—
 - (a) takes no action other than obstructing such entrances;
 - (b) does not dig into the tops or sides of the entrances;
 - (c) complies with subsection (5) below as to the materials used for obstructing the entrances and with subsection (6) below as to how and when they are to be placed and removed; and
 - (d) is acting with the authority of the owner or occupier of the land and the authority of a recognised Hunt.]
- (5) [F8The materials used shall be only—
 - (a) untainted straw or hay, or leaf-litter, bracken or loose soil; or
 - (b) a bundle of sticks or faggots, or paper sacks either empty or filled with untainted straw or hay or leaf-litter, bracken or loose soil.]
- (6) [F8The materials shall not be packed hard into the entrances and—
 - (a) if they are of the kind mentioned in paragraph (a) of subsection (5) above, they shall not be placed in the entrances except on the day of the hunt or after midday on the preceding day;
 - (b) if they are of the kind mentioned in paragraph (b) of that subsection, they shall not be placed in the entrances except on the day of the hunt and shall be removed on the same day.]

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- (7) ^{F8}A person is not guilty of an offence under section 3(a), (c) or (e) above by reason of his hounds marking at a badger sett provided they are withdrawn as soon as reasonably practicable.]
- (8) ^{F8}Each recognised Hunt shall keep a register of the persons authorised to act under subsection (4) above.]
- (9) ^{F8} In this section “ recognised Hunt ” means a Hunt recognised by the Masters of Fox Hounds Association, the Association of Masters of Harriers and Beagles or the Central Committee of Fell Packs.]]

Textual Amendments

- F4** Words in s. 8(1) substituted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\), s. 59\(2\), Sch. 6 para. 26\(5\)\(a\)](#); S.S.I. 2004/407, art. 2(b)
- F5** Word in s. 8(3) substituted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\), s. 59\(2\), Sch. 6 para. 26\(5\)\(b\)\(i\)](#); S.S.I. 2004/407, art. 2(b)
- F6** Words in s. 8(3) inserted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\), s. 59\(2\), Sch. 6 para. 26\(5\)\(b\)\(ii\)](#); S.S.I. 2004/407, art. 2(b)
- F7** S. 8(4)-(9) repealed (S.) (1.8.2002) by [2002 asp 6, s. 11, Sch. para. 5](#); S.S.I. 2002/181, [art. 2](#)
- F8** S. 8(4)-(9) repealed (E.W.) (18.2.2005) by [Hunting Act 2004 \(c. 37\), s. 15, Sch. 2 para. 4, Sch. 3](#) (with s. 12)

9 Exceptions from s. 4.

A person is not guilty of an offence under section 4 above by reason of having a live badger in his possession or under his control if—

- (a) it is in his possession or under his control, as the case may be, in the course of his business as a carrier; or
- (b) it has been disabled otherwise than by his ^{F9}unlawful] act and taken by him solely for the purpose of tending it ^{F10}and releasing it when no longer disabled] and it is necessary for that purpose for it to remain in his possession or under his control, as the case may be.

Textual Amendments

- F9** Word in S. 9(b) inserted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\), s. 59\(2\), Sch. 6 para. 26\(6\)\(a\)](#); S.S.I. 2004/407, art. 2(b)
- F10** Words in S. 9(b) inserted (S.) (1.10.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\), s. 59\(2\), Sch. 6 para. 26\(6\)\(b\)](#); S.S.I. 2004/407, art. 2(b)

10 Licences.

- (1) A licence may be granted to any person by^{F11}the appropriate ^{F12}conservation body][^{F12}authority]] authorising him, notwithstanding anything in the foregoing provisions of this Act, but subject to compliance with any conditions specified in the licence—
- (a) for scientific or educational purposes or for the conservation of badgers—

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- (i) to kill or take, within an area specified in the licence by any means so specified, or to sell, or to have in his possession, any number of badgers so specified; or
 - (ii) to interfere with any badger sett within an area specified in the licence by any means so specified;
 - (b) for the purpose of any zoological gardens or collection specified in the licence, to take within an area specified in the licence by any means so specified, or to sell, or to have in his possession, any number of badgers so specified;
 - (c) for the purpose of ringing and marking, to take badgers within an area specified in the licence, to mark such badgers or to attach to them any ring, tag or other marking device as specified in the licence;
 - (d) for the purpose of any development as defined in section 55(1) of the ^{M2}Town and Country Planning Act 1990 or, as respects Scotland, [^{F13}section 26(1) of the Town and Country Planning (Scotland) Act 1997], to interfere with a badger sett within an area specified in the licence by any means so specified;
 - (e) for the purpose of the preservation, or archaeological investigation, of a monument scheduled under section 1 of the ^{M3}Ancient Monuments and Archaeological Areas Act 1979, to interfere with a badger sett within an area specified in the licence by any means so specified;
 - (f) for the purpose of investigating whether any offence has been committed or gathering evidence in connection with proceedings before any court, to interfere with a badger sett within an area specified in the licence by any means so specified.
- (2) [^{F14}A licence may be granted to any person by the appropriate Minister authorising him, notwithstanding anything in the foregoing provisions of this Act, but subject to compliance with any conditions specified in the licence—]
- [^{F15}(a)] [^{F15}(g)] for the purpose of preventing the spread of disease, to kill or take badgers, or to interfere with a badger sett, within an area specified in the licence by any means so specified;
 - [^{F15}(b)] [^{F15}(h)] for the purpose of preventing serious damage to land, crops, poultry or any other form of property, to kill or take badgers, or to interfere with a badger sett, within an area specified in the licence by any means so specified;
 - [^{F15}(c)] [^{F15}(i)] for the purpose of any agricultural or forestry operation, to interfere with a badger sett within an area specified in the licence by any means so specified;
 - [^{F15}(d)] [^{F15}(j)] for the purpose of any operation (whether by virtue of the ^{M4}Land Drainage Act 1991 or otherwise) to maintain or improve any existing watercourse or drainage works, or to construct new works required for the drainage of any land, including works for the purpose of defence against sea water or tidal water, to interfere with a badger sett within an area specified in the licence by any means so specified.
- [^{F16}(3) A licence may be granted to any person either by [^{F17}the appropriate conservation body] or the appropriate Minister authorising that person, notwithstanding anything in the foregoing provisions of this Act, but subject to compliance with any conditions specified in the licence,]
- [^{F18}(k)] to interfere with a badger sett within an area specified in the licence by any means so specified for the purpose of controlling foxes in order to protect livestock, game or wild life.

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[^{F19}(4) In this section “[^{F20}the appropriate conservation body]” means, in relation to a licence for an area—

(b) in Wales, the Countryside Council for Wales].

[^{F19}(4) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 10A below.]

(5) [^{F22} In this section “the appropriate Minister” means in relation to a licence for an area

(a) in England, the [^{F23}Secretary of State]; and

(b) in Wales or in Scotland, the Secretary of State.]

[^{F24}(6) The Scottish Ministers must consult Scottish Natural Heritage before granting a licence under subsection (1) above.]

[^{F27}(7) In relation to Scottish Natural Heritage subsection (6) above shall have effect with the omission of the reference to subsection (2)(c) and (d).]

(8) A licence granted under this section may be [^{F28}modified or] revoked at any time by the authority by whom it was granted, and without prejudice to any other liability to a penalty which he may have incurred under this or any other Act, a person who contravenes or fails to comply with any condition imposed on the grant of a licence under this section is guilty of an offence.

(9) A licence under this section shall not be unreasonably withheld or revoked.

(10) It shall be a defence in proceedings for an offence under section 8(b) of the ^{M5}Protection of Animals Act 1911 or section 7(b) of the ^{M6}Protection of Animals (Scotland) Act 1912 (each of which restricts the placing on land of poison and poisonous substances) to show that—

(a) the act alleged to constitute the offence was done under the authority of a licence granted under [^{F29}subsection (2)(a)] [^{F29}subsection (1)(g)] above; and

(b) any conditions specified in the licence were complied with.

Textual Amendments

F11 Words in s. 10(1) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\), s. 107, Sch. 11 para. 137\(a\)](#); S.I. 2006/2541, art. 2 (with Sch.)

F12 Word in s. 10(1) substituted (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\), ss. 33\(6\)\(a\), 43\(1\)](#) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)

F13 Words in s. 10(1)(d) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 53**

F14 Words in s. 10(2) repealed (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\), ss. 33\(6\)\(b\)\(i\), 43\(1\)](#) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)

F15 S. 10(2)(a)-(d) renumbered as s. 10(1)(g)-(j) (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\), ss. 33\(6\)\(b\)\(ii\), 43\(1\)](#) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)

F16 Words in s. 10(3) repealed (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\), ss. 33\(6\)\(c\)\(i\), 43\(1\)](#) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)

F17 Words in s. 10(3) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\), s. 107, Sch. 11 para. 137\(a\)](#); S.I. 2006/2541, art. 2 (with Sch.)

F18 Words in s. 10(3) renumbered as s. 10(1)(k) (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\), ss. 33\(6\)\(c\)\(ii\), 43\(1\)](#) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)

F19 S. 10(4) substituted (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\), ss. 33\(6\)\(d\), 43\(1\)](#) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)

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- F20** Words in s. 10(4) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 107, **Sch. 11 para. 137(a)**; S.I. 2006/2541, art. 2 (with Sch.)
- F21** Words in s. 10(4)(a) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 107, **Sch. 11 para. 137(b)**; S.I. 2006/2541, art. 2 (with Sch.)
- F22** S. 10(5) repealed (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 33(6)(e)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F23** Words in s. 10(5)(a) substituted (27.3.2002) by S.I. 2002/794, art. 5(1), **Sch. 1 para. 35** (with art. 6)
- F24** S. 10(6) substituted (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 33(6)(f)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F25** Words in s. 10(6) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 107, **Sch. 11 para. 137(a)**; S.I. 2006/2541, art. 2 (with Sch.)
- F26** Word in s. 10(6) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 107, **Sch. 11 para. 137(c)**; S.I. 2006/2541, art. 2 (with Sch.)
- F27** S. 10(7) repealed (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 33(6)(g)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F28** Words in s. 10(8) inserted (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 33(6)(h)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)
- F29** Words in s. 10(10) substituted (S.) (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 33(6)(i)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(m)

Marginal Citations

- M2** 1990 c. 8 .
- M3** 1979 c. 46 .
- M4** 1991 c. 59 .
- M5** 1911 c. 27 .
- M6** 1912 c. 14 .

[^{F30}10A Delegation of licence-granting power: Scotland

- (1) The Scottish Ministers may delegate their functions in relation to licences under section 10 above to—
- (a) Scottish Natural Heritage; or
 - (b) a local authority (but only in relation to the purpose mentioned in section 10(1)(d)).
- (2) A delegation may be, to any degree, general or specific and may in particular relate to—
- (a) a specific badger or badger sett;
 - (b) a particular licence or type of licence;
 - (c) a particular area.
- (3) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.
- (4) A delegation to—
- (a) Scottish Natural Heritage under subsection (1)(a) above is to be made by written direction;
 - (b) a local authority under subsection (1)(b) above is to be made by order made by statutory instrument.

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- (5) A local authority which is delegated a function under subsection (1)(b) above must, before granting or modifying a licence, consult Scottish Natural Heritage.
- (6) The Scottish Ministers may modify or revoke a direction under subsection (4)(a) above.
- (7) Where a direction or order under subsection (4) above is revoked, any existing licence granted under the direction or order continues to have effect (unless the revoking direction or order provides otherwise).
- (8) A statutory instrument containing an order under subsection (4)(b) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (9) Before making an order under subsection (4)(b) above, the Scottish Ministers must consult—
 - (a) the local authority to which functions are to be delegated under the order;
 - (b) Scottish Natural Heritage; and
 - (c) any other persons the Scottish Ministers consider are affected by the making of the order.
- (10) The Scottish Ministers must give consideration to any proposals for the making by them of an order under subsection (4)(b) above with respect to any area which may be submitted to them by a local authority whose area includes that area.]

Textual Amendments

F30 S. 10A inserted (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), **ss. 33(7), 43(1)** (with [s. 41\(1\)](#)); [S.S.I. 2011/279](#), art. 2(1)(m)

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