

CAMPAIGN TO MAKE BADGER CRUELTY A NOTIFIABLE OFFENCE

BRIEFING DOCUMENT

CONTENTS

	<u>PAGE</u>
❖ SUMMARY	2
❖ PARLIAMENTARY SUPPORT	3
❖ CELEBRITY SUPPORT	4
❖ ANIMAL WELFARE ORGANISATIONS	4
❖ SUPPORTER INVOLVEMENT	4
❖ POLICE WILDLIFE LIAISON OFFICERS	5 - 8
❖ RECORDS KEPT BY THE HOME OFFICE CRIME AND CRIMINAL JUSTICE UNIT	9
❖ NATIONAL POLICE RECORDS	9
❖ NATIONAL CRIME INTELLIGENCE UNIT	9
❖ CURRENT LEGISLATION AND ITS WEAKNESSES	10
❖ SUGGESTED AMENDMENTS TO THE PROTECTION OF BADGERS ACT 1992 (Draft)	11-13
❖ APPENDIX	
1. Newspaper Article <i>The Observer Sunday June 16th 2002</i> "20,000 die in slaughter of the badgers"	14
2. Example of an incident that proves badgers are being dug out and transported elsewhere for baiting	15

This document has been prepared by Naturewatch and includes information from: Deputy Chief and Chief Police Constables, Members of Parliament, Police Wildlife Officers, Department for Environment, Food and Rural Affairs (DEFRA), Home Office, Partnership for Action Against Wildlife Crime (PAW), NFBG and Badger Groups.

CAMPAIGN TO MAKE BADGER CRUELTY A NOTIFIABLE OFFENCE

Summary

It is our belief, and that of 264 Members of Parliament, Police Wildlife Liaison Officers throughout Great Britain, leading Animal Welfare Organisations, more than 30 celebrities and thousands of members of the public, that because badger crime is not a 'notifiable' offence it is frequently considered a low priority by many Police Forces which frequently means badger cruelty cases go uninvestigated and those responsible are never caught. This fact is clearly illustrated by statistics held at the Home Office Crime and Criminal Justice Unit - the appallingly low figures are an embarrassing but true reflection of the present situation. The fact that approximately 10,000 badgers are illegally killed each year proves that very few instances of persecution are reaching the courts (*source: Research carried out by Prof. Stephen Harris, Bristol University, together with Penny Creswell and Don Jefferies of the Nature Conservancy Council*). Disturbingly, the number of badgers persecuted is forecast to double following an explosion in this barbaric activity (*see newspaper article, page 14*).

At present, police forces are not encouraged to take badger crime seriously which often results in a reduced effectiveness in tackling other types of criminal activity as it is frequently demonstrated that the individuals responsible are also involved with drugs, violence, theft and firearms offences. Without proper scrutiny of how police forces deal with badger crime there is no incentive to boost detection rates or clear outstanding cases. Having publicly available information on the comparative performances of police forces has proved a very successful way of providing performance incentives to the police on various areas of crime. We see no reason why this successful mechanism should not be extended to cover offences under the Protection of Badgers Act by making those offences notifiable to the Home Office.

With regard to badger crime being recorded on the Police National Computer, after speaking with about 20 Police Wildlife Liaison Officer (WLOs) we know this simply is not the case. This system is recognised by WLOs as being unreliable, inaccurate and meaningless, and in no way could be described as a comprehensive and consistent recording mechanism. At present each Police Force records wildlife crime differently and some don't record it at all, which means there is no accurate means of assessing the level of badger-related crime in this country.

Without doubt, the Police service has little idea of how much wildlife crime there is in the UK and, as well as comments made by Police Wildlife Liaison Officers (*see excerpts from letters written by Police Wildlife Liaison Officers, pages 5 - 8*), this fact is recognised by Mr Richard Brunstrom, Chief Constable, North Wales. Mr Brunstrom also holds the Wildlife Crime Portfolio for the Association of Chief Police Officers (ACPO) and is co-chair of the Partnership for Action Against Wildlife Crime (PAW). Mr Brunstrom says: *"There is no doubt that the lack of an accurate, comprehensive and consistent recording mechanism, throughout the UK, is hampering our efforts to scope out the size of the problem with the Badgers Act 1992."*

We also strongly recommend that the enforcement of the Protection of Badgers Act 1992 needs to be strengthened by introducing a package of measures to give increased powers to the police thereby ensuring proactive measures can be taken against those suspected of offences. We believe penalties should also be increased as at present they do not reflect the seriousness of the crimes. This view has the support of Mr Richard Brunstrom and Police Wildlife Officers. (*Suggested legislative amendments – draft, pages 11 - 13.*)

This is an issue that continues to be a matter of serious concern to those who work in this specialist area of criminal activity. Correspondence has been entered into with the Home Office by the Police and various NGO's, who have been voicing their concerns about the lack of recordability for many years.

There is no doubt that substantial evidence exists proving the need for this vital change to be made to the way in which badger crime is recorded.

Written by Caroline Barker
Naturewatch

PARLIAMENTARY SUPPORT

At the time of writing, the aims of the Naturewatch Badger Campaign are supported by 264 Members of Parliament.

This is made up of:

- 189 Members of Parliament who signed EDM 371 in the last Parliamentary Session;**
- 25 Additional Members of Parliament who have added their signature to EDM 911 in the current Session. (In total 122 MPs have signed EDM 911.);**
- and a further**
- 50 Members of Parliament who have expressed their support in writing for the aims of this campaign.**

Many of these MPs have also written to the Home Secretary/Minister of State and/or asked a Parliamentary Question with regard to this issue following correspondence with Naturewatch and their constituents.

Early Day Motions 371 & 911 - PROTECTION OF BADGERS

That this House notes that the Protection of Badgers Act 1992 provides badgers with a high level of legislative protection; is concerned that badgers continue to be persecuted; believes that this level of persecution could be reduced if all police forces were to have at least one full-time Wildlife Liaison Officer; notes that existing WLOs have insufficient financial or time resources allocated to their wildlife duties and so cannot always direct adequate attention to this work; and calls for the Protection of Badgers Act 1992 to be amended to make badger cruelty a recordable crime worthy of police time and money.

Both EDMs were tabled by Nigel Jones MP and supported by Tony Banks MP, Peter Bottomley MP and Simon Thomas MP.

In addition to the 264 Members of Parliament who support the campaign, a further 42 MPs have written to the Home Office or DEFRA or put Parliamentary Written Questions following correspondence received from constituents.

CELEBRITY SUPPORT

We are delighted that more than 30 Celebrities have expressed their support for this campaign and many of them have kindly helped raise awareness of our aims:

Pollyanna Pickering, Hayley Mills, Princess Elizabeth de Croÿ, Alexandra Bastedo and Chris Packham (Patrons), Virginia McKenna, Jilly Cooper, Anthea Turner, John Humphrys, Benjamin Zephaniah, Sarah Duchess of York, Lorraine Kelly, Piers Morgan, Paddy Ashdown, Melvyn Bragg, Carla Lane, Harry Hill, Joan Plowright, Dame Judi Dench, Lord Roy Hattersley, Sharron Davies, Jonathon Morris, Wendy Turner-Webster, David Bellamy, Stephanie Cole, Jean Boht, Alexei Sayle, John Hurt, Julian Clary, Colin Baker and Jenny Seagrove.

ANIMAL WELFARE ORGANISATIONS

In addition, the following leading animal welfare organisations have confirmed their support for this campaign: RSPCA Special Operations Unit, Advocates For Animals, Viva, League Against Cruel Sports, Animal Aid, Born Free Foundation, Animal Defenders, National Anti-Hunt Campaign, Friends of Conservation International, Animal Action, National Fox Welfare Society, Christian Ecology Link, The Fox Project, Animal Christian Concern, and many Badger Groups.

We are very grateful to all groups who have helped to raise awareness of this campaign to their supporters by enclosing leaflets in mailings; including information in newsletters; adding information to websites and by distributing campaign leaflets via information stalls.

SUPPORTER INVOLVEMENT

Right from the word GO, the response from Naturewatch supporters and concerned members of the public has been overwhelming making it very clear how strongly the public feels about this issue. Thousands of letters have been flowing in to the Prime Minister's office and Home Office. In addition, hundreds of letters have also been written by the public to Members of Parliament, Police Chief Constables and newspapers. It's clearly an issue that the public feels very strongly about. Not surprisingly, before the launch of this campaign, very few people knew that badger crime, and most other wildlife crime, is not included in official crime statistics.

POLICE WILDLIFE LIAISON OFFICERS

All the Police Wildlife Officers we've spoken with during this campaign have been very supportive as they are fully aware that until badger crime becomes an area where police performance is measured, it most certainly will not be given the resources enabling it to be tackled effectively. Police forces focus on priorities set by the government, such as violent crime, drugs, car crime and burglary, where their performance is measured.

An article in the Carmarthen Journal records Mr Terence Grange, Chief Constable of Dyfed-Powys Police, as saying,

"As with any other public service organisation, what gets measured gets done. If you judge a senior officer on how well they are meeting priorities then obviously that is what will be focused on."

To further exacerbate the situation, the vast majority of forces do not have a full-time Wildlife Liaison Officer (WLO) and existing part-time WLO's are expected to work without a dedicated budget, constantly being left with no alternative other than to try and obtain funding for initiatives from various departments across the force. The vast majority of WLOs perform the role in addition to their many other police duties, which often means that officers are left with no option other than to do the work in their own time. Currently, it is not unknown for badger groups to experience the frustration of the Police being unable to attend an incident. At present, only about 7 out of 52 Police Forces across Great Britain have a full-time Wildlife Officer.

If each police force had at least one full-time police Wildlife Officer, and/or a civilian co-ordinator, who was able to carry out the role in a full-time capacity then pro-active initiatives could be undertaken on a regular basis to combat badger-related crime (*and other wildlife crime*) instead of just responding to the problems when they arise. In addition, all WLO's should be allowed official time out of their normal duties to attend WLO training courses and relevant conferences (*this is not always the case at present*). WLO's should have resources allocated to fund their work and in the case of part-time WLOs, a specific time allowance should be allocated.

Between March and October 2002 Naturewatch corresponded with Wildlife Liaison Officers representing the 52 Police Forces in Great Britain and was delighted to receive a reply from 79% (41 forces). Of those 41 forces 46% (19 forces) are in broad agreement with the aim of the campaign, 39% (16 forces) did not commit themselves either way and 15% (6 forces) sent a short acknowledgement.

Below you will find a few extremely interesting excerpts from letters written to Naturewatch by Police Wildlife Liaison Officers.

Police Force One

..... I am afraid that it is impossible for me to provide details of badger incidents occurring before I took up the post It is quite easy to show a link between those engaged in badger baiting and other crimes. I know the identity of many badger baiters in my own force area but the inadequacies of the Protection of Badger Act do nothing to assist with proactive work. Of the people I know I would suggest that the majority have convictions for violence and/or dishonesty.....

Police Force Two

..... I agree with you that the recording of wildlife crime whether it relates to badgers, birds or any wild animal, by the Home Office would be useful, especially in identifying the problems our wildlife face from such criminals.....

Police Force Three

..... Apart from the ?, which has around 20 (which are very well watched), we do not have many active badger setts in ? We do however have many men who are involved in offences against badgers. I have a good deal of intelligence on these men, I am aware that many of them are involved in other criminal activity including drugs and violence..... I would wholeheartedly support the recording of badger crime, I believe that this should be extended to include any offences against the Wildlife and Countryside Act 1981..... I wish you good luck with your campaign.

Police Force Four

..... In addition to the above incidents, I have carried out a 'running battle' with the various hunts and sett stoppers in the County to get them to block badger setts correctly. Whilst things have improved,

some setts are still being badly blocked. Anything Naturewatch can do to get Parliament to repeal the ridiculous sections allowing hunts to block setts would help ? badgers to survive better. I also believe that making badger crime recordable would make Police forces treat the reported incidents more seriously and with a higher priority.....

Police Force Five

I am a full-time WLO, one of only a handful around the country The bottom line is whether or not individual Chief Constables feel they are of sufficient value to a Force in terms of the work they do rather than their capacity to directly impact on reducing crime. I have always argued that the huge number of partnerships WLOs forge are of immense value both to the force and their impact on rural crime. Fortunately, I have a Chief Constable who recognises that but I know that not to be the case in other parts of the country..... I am in broad agreement with the objectives of Naturewatch in respect of Badger offences involving cruelty becoming recordable offences..... I fully support any campaign which seeks to reduce cruelty to animals and would help Police bring offenders to Court.....

Police Force Six

..... As the current Wildlife Liaison Officer for ? I echo your concerns. I agree with you that we all need to take these matters seriously and take positive action to prevent their occurrence. We in ? Police fully support Naturewatch in its campaign to have badger related crimes recorded and have informed them as such.....

Police Force Seven

..... Regardless of my inability to assist directly I can tell you that I, and most of my fellow wildlife officers, fully support your aims. It seems irrational that the Home Office does not record offences committed against wildlife. I can only assume they do not want the recorded crime rate to rise any further. I also know that in the past, badger diggers and baiters were virtually always people with long criminal records - usually for violent crime. I suspect this is still the case in those areas that still suffer from this type of crime.....

Police Force Eight

..... researching of wildlife crime is also not without difficulty due to the fact that it is not a notifiable offence and information is only recorded on the Police National Computer in the event that other offences are also prosecuted.....

Police Force Nine

..... Unfortunately, in ? we do not collate details of these sorts of incidents and, therefore, at this moment in time, I am unable to provide you with any information.....

Police Force Ten

..... I agree with most of your comments raised in your letter and it is true that crimes involving badgers and other wildlife are not classified by the Home Office as recordable crime. I, along with other Police Wildlife Liaison Officers around the country have lobbied strongly to get this changed, so far without success.....

..... This force takes wildlife and environmental crime issues very seriously and this is reflected in the fact that we are one of only a handful of Forces who have a dedicated officer working full-time on wildlife crime. This has allowed me to be proactive in pursuing diggers and baiters and we have had good success in bring prosecution against these people. In most cases however, sentences handed down have been disappointing and I believe there is a strong argument for the Home Office to issue tougher guidelines to the Judiciary.....

...The number of reported incidents involving badger persecution are on the increase and whilst this concerns me greatly, I do feel that our campaign to highlight wildlife crime is encouraging more people to ring in with information, which is a positive step...

Police Force Eleven

..... I have made inquiries within the Force to see whether this information is captured by our systems (badger-related offences). Unfortunately, as you rightly state, badger crimes are not classified as notifiable offences. I must therefore rely on anecdotal information supplied by the Force wildlife liaison officers..... Even more difficult is demonstrating a link between badger crime and other types of offences. Whilst this may well be the case our data recording systems do not enable me to prove the point..... Wildlife crime is not a Force policing priority which occasionally means that officers find it

difficult to find the time to investigate wildlife matters..... ? Police would support any initiative to include badger crimes within the list of notifiable offences.....

Police Force Twelve

..... I have recently been appointed one of two Wildlife Liaison Officers within ? Police although it is hoped that another two will be appointed later this year. Unfortunately we are only part time and so far I have had to do most of the work in relation to this work within my own time due to the lack of manpower at my station.....

Police Force Thirteen

As discussed I have searched our system, unfortunately we only have 2 years of information which is retrievable, the previous 3 years are held on an older system and has now been archived. However this search is also impounded by the method in which we record the incidents. I have a choice of 8 result codes all of which could relate to a Badger incident, this can be hindered yet again by placing what we call an ASNT (area search no trace) code as the first result code. I have searched all of the result codes and this came up with over 5,000 animal related incidents. The search was carried out from 06/04/2000 until 07/04/2002, within this search parameter 94 incidents related to Badgers, either Dead (road kill) injured or just seen, 17 of these incidents related to Sett Disturbance, Baiting etc., of these 17 no arrests were made but intelligence has been gathered..... I do believe we have had more reports than quoted since 06/04/2000 however if any of my colleagues have entered the incident with an Animal related code and nothing was found upon arrival at the location the incident could have been closed with one of 3 codes, Area Search No Trace/Suspicious Circumstances/Animal (1 of 8 codes). If any of the first 2 result codes were used then I am never going to find the true figure.....

Police Force Fourteen

..... As badger crime is not a notifiable offence our only information is any that has been recorded as an event attended by the police. Only the last twelve months details are available The other two incidents were:- a) a report that unknown persons had been interfering with a badger set by putting down rat poison, b) a man was seen running carrying a gun with one hand and a badger with the other. In both instances no further action was taken following the immediate investigations.....

Police Force Fifteen

...Unfortunately, like many other Forces, our WLOs have to fit in their WLO work on top of their other duties. I would very much like to be full-time and have lots of ideas of how to take the role forward.... I wish you luck in your campaign to have offences made recordable by the Home Office.....

Police Force Sixteen

.....Looking through my records that only go back to 1999, I cannot supply you with any evidence which links badger digging with other crimes. We may know of suspects who are involved in other crimes, but there is no hard evidence and certainly I cannot prove that link. The main problem is the lack of evidence, sometimes lack of commitment, and sometimes the delay in attendance has been an issue. Recording all wildlife crime is an issue, and whilst they are not officially recorded they are not taken seriously.....

Police Force Seventeen

.... I can confirm that we do not collect figures for badger cruelty offences

Police Force Eighteen

..... In 1997 an internal study of suspect or suspicious vehicles or persons in rural locations was completed which showed that 87% of these persons traced and checked had criminal convictions recorded against them. One of the conclusions being that the travelling criminal will steal or commit a burglary as their "primary occupation" while their leisure and sporting activities would also be of an illegal nature.....

....This year there have been at least 10 cases of sett interference or possible badger baiting incidents reported to the Police. Of these, two cases relate to the same family, many of whom have previous convictions for property and violent crime.....

.... I would not be surprised if there were other cases not reported to the Police.....

Police Force Nineteen

.....The fact that badger-related crime is not recorded makes it virtually impossible to accurately gauge the extent to which badgers are threatened..... Unfortunately, with competing policing priorities it is not always possible to dedicate as much time to wildlife issues alone that we would wish.....

Police Force Twenty

.....There is strong anecdotal evidence that wildlife crime is increasing but limited hard evidence to back this up as there is no central record of wildlife offences..... Over last three years, a number of suspicious incidents have been reported within ? in relation to possible badger digging/sett interference however, criminal proceedings have not been instituted, in the main, due to lack of evidence and information as to the identity of the offenders.

Police Force Twenty-One

.....From 1st January 1997 to present (May 02) I found 96 reports of suspected Badger Baiters, 16 reports of setts tampered with and 164 reports of dead Badgers due to road traffic accidents. I personally feel that this is just the tip of the iceberg as, being a very rural county there must be numerous incidents that are never witnessed. None of the incidents reported resulted in a prosecution..... If I can be of any further assistance do not hesitate to contact me and "Good Luck" with the campaign. If these sorts of offences do become recordable and thereby create Home Office statistics then Senior Police Officers may well have to combat them by deploying resources accordingly!.....

Police Force Twenty-Two

..... However, the Wildlife Legislation of England and Wales is at best limited and much is in need of being updated..... In April this year DEFRA sent out a consultation document to every Police Force to seek the views of the Police Service on how current legislation could be improved. Many of the Forces including ? Police responded positively requesting that a number of wildlife offences are made notifiable and that the Police are given adequate power to deal with these offences both properly and expeditiously.... (*Naturewatch has confirmed this Police Force requested that offences under the Protection of Badgers Act should be made notifiable.*)

And finally, many forces confirmed that it is frequently demonstrated that the individuals responsible are also involved with other criminal activity such as drugs, violence, theft and firearms offences. For example:

.....It is also recognised that persons involved in wildlife crime are often equally involved in other crimes.....

..... as you rightly point out, more often than not the offender is involved in other criminal activity.....

..... I can certainly agree that those people who are involved in wildlife crime will often be involved in other serious crime as well....

....., and as you rightly point out and from our enquiries we often find the offender is involved in other crime.....

.....You are correct in your view that some persons who commit offences against badgers also commit other types of crime.....

RECORDS KEPT BY THE HOME OFFICE CRIME AND CRIMINAL JUSTICE UNIT

These statistics are worthless as they fail to show the extent of the problem. They refer to the number of offenders dealt with and not the number of incidents. Given that in two cases recently investigated by one force there were 4 offenders involved in one case and 6 offenders in the other, it is apparent that very few instances of persecution are reaching the court. *(In 2001, in England and Wales, only 9 individuals were proceeded against and only 5 of those were found guilty!)*

NATIONAL POLICE RECORDS

The National Police Records (Recordable Offences) Regulations 2000, provide for the recording in national police records of convictions, cautions, reprimands and warnings in respect of all offence provisions which carry the possibility of imprisonment in the case of an adult. In the case of badger persecution, the Home Office do not require the Police to keep statistics relating to these offences.

In reality, this system is recognised by WLOs as being unreliable, inaccurate and meaningless, and in no way could be described as a comprehensive and consistent recording mechanism which is what would successfully be achieved by making badger-related offences notifiable. At present each Police Force records wildlife crime differently and some don't record it at all, which means there is no accurate means of assessing the level of badger-related crime in this country and no comparisons can be made between the performances of various police forces.

Without doubt, the Police service has little idea of how much wildlife crime there is in the UK and, as well as comments made by Police Wildlife Liaison Officers, this fact is recognised by Mr Richard Brunstrom, Chief Constable, North Wales. Mr Brunstrom also holds the Wildlife Crime Portfolio for the Association of Chief Police Officers (ACPO). As ACPO representative, he is also co-chair of the Partnership for Action Against Wildlife Crime (PAW). Mr Brunstrom says:

"As a Police service we recognise that we have little idea of how much wildlife crime there is in the United Kingdom and this is something we must address. Not only does it mean that we do not know how many offences involving badgers take place each year but also we don't know how many offences of egg theft, poaching and other wildlife crimes take place."

"I employ a full time Wildlife and Environmental Officer within North Wales Police and for the past 12 months or so he has been keeping records of wildlife incidents. This is also done in some other forces where full time wildlife officers are employed but it needs to be done in a consistent manner throughout the United Kingdom."

"However (badger persecution) is a Policing responsibility and there is a need to demonstrate that there is a problem to be tackled. The evidence to prove the problem is not available at present."

NATIONAL CRIME INTELLIGENCE UNIT

In April 2002 the National Criminal Intelligence Service launched a Wildlife Crime Intelligence Unit. Although the newly established unit will undoubtedly be a useful route through which to register concerns, it is understood that the main reason the unit has been set up is to fight the illegal trade in endangered animals and birds as well as products such as caviar and ivory.

CURRENT LEGISLATION AND ITS WEAKNESSES

Although the courts have powers available to them under the Protection of Badgers Act 1992, including imprisonment in relation to a number of offence provisions, Parliament decreed that all offences committed under the Protection of Badgers Act should be triable summarily - that is, tried in Magistrates' Courts. As you will be aware, all criminal offences tried in Magistrate's Courts are summary only which means they are not notified to the Home Office and, therefore, are not included in official crime statistics.

The main legislation protecting badgers and their setts is the **Protection of Badgers Act 1992**. This Act which consolidated all previous legislation, provides badgers with a high level of legislative protection for an animal that is not endangered. However there are many weaknesses in the Act:

1. **Offences are not supported by a power of arrest** - prevents suspected offenders from being arrested at the scene of crime and taken to a police station for questioning. *Can only be invited to attend for interview by which time they will have agreed their alibis. Suspects can hamper police investigations by refusing to be interviewed.*
2. **No powers to access property and land** - Law enforcers cannot investigate alleged offences properly if access to property and land is denied. *Frequently the case if the landowner is involved or knows the suspects.*
3. **Penalties for offences need to be increased as, at present, the limited penalties do not act as deterrents and are not seen as just for the serious acts of cruelty that are committed** - *Currently, the maximum penalty is up to six months imprisonment or a fine at level 5 (£5,000), or both - the fine can be multiplied by the number of badger involved. Increasing penalties would mean some cases would move from Magistrates' to Crown Courts.*

In addition to the specific protections provided by the 1992 Act, badgers are also listed on Schedule 6 of the **Wildlife and Countryside Act 1981 (WCA)** - section 11 prohibits the use of certain methods of taking or killing a wild animal, including illuminating devices and self-locking snares. Other legislation relevant to Badgers that provide general protection includes the **Protection of Animals Act 1911**, which provides a power of arrest if it can be shown that the offenders are being cruel to the dogs in putting them into a badger sett, and the **Abandonment of Animals Act 1960**. Offences under these Acts include causing unnecessary suffering, abandoning in circumstances likely to result in suffering, and fighting or baiting animals. Sentencing for these offences can be a fine at level 5 (£5,000) or imprisonment up to six months; confiscation or destruction of dogs and a ban on keeping animals. The **Powers of Criminal Courts Act 1973** (s.43) allows the forfeiture of property used, or intended to be used, to commit or facilitate the commission of any offence, including dogs and vehicles.

However, in practice, penalties handed down by magistrates are minimal. Although magistrates have the power to confiscate any weapon or article used (including vehicles), confiscate dogs and impose a ban on keeping dogs, these powers are hardly ever used. (Can also seize any badger or skin relating to the offence and, if necessary, order that a dog be destroyed.)

Exceptions

Certain wildlife offences are notifiable offences and therefore included in recorded crime, for example offences under section 14 of the Wildlife and Countryside Act 1981 (releasing or allowing to escape, certain 'non-native' species into the wild in Great Britain - a sentence of up to two years may be handed down). The most significant exception is when an offence relates to the importation of items contrary to the COTES regulations (The Control of Trade in Endangered Species Regulations 1997) that are recorded. *The COTES Regulations are directly related to the Control of Trade in Endangered Species as specified under CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora). Clearly these exceptions do not help the Badger; though protected they are not an endangered animal.*

SUGGESTED AMENDMENTS TO THE PROTECTION OF BADGERS ACT 1992 (Draft)

Naturewatch has consulted with Police Wildlife Officers and other members of the Police Force to ensure these amendments are workable.

Although the main aim of this campaign is to see badger cruelty made a notifiable offence, there are a number of legislative amendments that are crucial to enable Police Officers to be effective in tackling badger crime. At present the Protection of Badgers Act 1992 fails to provide Police Officers with the powers to be effective and does not allow them to be proactive against known badger persecutors. This view is held by Police Wildlife Officers throughout the country and by everyone we have been in contact with during the course of this campaign including the Chief Constable of North Wales Police, Richard Brunstrom.

There are two means of addressing the situation.

OPTION 1

Add badgers to schedule 5 of the Wildlife and Countryside Act 1981.

However, to consider placing badgers into schedule 5 of the Wildlife and Countryside Act would in our view be strongly opposed by portions of the farming community who would argue that the animal is too abundant to be worthy of that type of protection. At present there is a clear distinction between the Wildlife and Countryside Act that is seen as conservation legislation and the Protection of Badgers Act that is considered to be welfare based.

OPTION 2

For the reasons given in the paragraph above, Option 2 is our preferred choice. Amendments to the Protection of Badgers Act 1992 as detailed below will provide for more effective enforcement without giving badgers the status of animals in need of protection for conservation reasons.

Amend the Protection of Badgers Act 1992 and other legislation to provide:

A. Power of arrest

Such people often have a good working knowledge of Police powers and procedures and on many occasions prosecutions have been made more difficult because of an inability to stop offenders from getting their story straight prior to interview and can even refuse to be interviewed. Amendment to legislation should be:

Police and Criminal Evidence Act 1984. Section 24(2)

After paragraph (t) insert

(u) An offence under any of the following provisions of the Protection of Badgers Act 1992,

(I) Section 1(1) (wilful killing, injuring taking.)

(II) Section 3

(a) damaging a badger sett or any part of it.

(b) Destroying a badger sett.

(c) Obstructing access to or any entrance of a badger sett.

(d) Causing a dog to enter a badger sett.

(e) Disturbing a badger when it is occupying a badger sett.

B. Power of entry onto land

At present there is no power under the Act to allow Police officers to enter land to investigate offences. This is often a problem where a sett may have been damaged yet there is no legal way of entering the land to examine the sett. If the landowner is involved or knows the suspects, which is quite often the case, then they are quite within their rights to refuse Police entry. Legislation needs to be amended to provide identical powers to those found under Section 19 (enforcement) of the Wildlife and Countryside Act 1981.

Protection of Badgers Act 1992, Section 11.

After paragraph (c) insert Section 11(2)

If a constable suspects with reasonable cause that an offence under sections 1, 2 or 3 of the Act has

taken place or is taking place he may for the purposes of exercising the Powers conferred by section 11(1) enter any land other than a dwelling house (with or without other persons).

C. Search warrants

The Act at present contains no provision for the obtaining of search warrants. Within a rural environment it is virtually impossible to be pro-active against known badger persecutors who indulge in digging or baiting. The chances of finding individuals are slim and rely largely on luck. Even then the gathering of evidence with limited resources and with a number of offenders present is troublesome resulting in difficult prosecutions.

A provision to allow for the granting of search warrants would enable Police officers to be far more pro-active in dealing with offences associated with badgers, targeting known offenders and gathering forensic evidence. Legislation needs to be amended to provide:

Protection of Badgers Act 1992 Section 11

Create Section 11(3).

If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that an offence under sections 1, 2 or 3 has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable (with or without other persons) to enter upon and search those premises and any persons present for the purpose of obtaining that evidence. In the application of this subsection to Scotland the reference to a justice of the peace includes a reference to the sheriff.

D. Limitation of proceedings

Currently, offences under the Protection of Badgers Act 1992 have to be commenced within six months of an offence taking place. Often offences are not detected until the time limit is close to expiration or has already expired. Amend the legislation to provide;

Protection of Badgers Act 1992 Section 11(4).

Summary proceedings for an offence to which this section applies may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge but no such proceedings shall be brought by virtue of this section more than two years after the commission of the offence.

E. Sett-Stoppers registers kept by Masters of Foxhounds

At present, in Section 8 of the Protection of Badgers Act 1992 there is a lack of police power to inspect the sett-stoppers registers that Masters of Foxhounds are obliged to keep. First hand information tells us that hunts generally refuse permission for police to view such registers. As a result, no prosecutions can be undertaken against sett-stoppers who illegally stop setts.

The Act should be amended to require hunts to record all occasions where setts have been stopped giving exact location, nature of stopping and all those carrying out the stopping. Any sett stopping should be entered in the register within 24 hours of the stopping. It should be a legal requirement for each hunt to have named masters who will carry the responsibility to ensure this is complied with otherwise the stopping should be considered illegal. In addition there must be a right for police to examine these registers and refusal by a hunt master should be an offence.

Although the legislative amendments listed above are the most crucial, there are however a number of further points that should also be considered:

- ❖ banning the manufacture, possession and use of all snares - *snaring badgers and other protected species is illegal (section 11 of the Wildlife and Countryside Act 1981) but this is hard to enforce while some snaring remains legal;*
- ❖ penalties for wildlife offences need to be increased as, at present, the limited penalties do not act as deterrents, they do not reflect the level of cruelty involved and are therefore not seen as just for the serious acts of suffering and cruelty that are committed, in particular, to the badger. *A set of guidelines need to be drawn up which would be easily accessible and command the respect of the judiciary, those involved in addressing wildlife crime and the wider public. Such guidelines would*

also help the courts achieve greater consistency in sentencing thereby increasing public confidence in the criminal justice system. Increasing penalties would mean some cases would move from Magistrates' to Crown Courts;

- ❖ the loophole should be closed that allows a person disqualified from keeping a dog themselves to have access to a dog being kept in the same house by a relative or partner. Therefore a disqualification order should, ideally, not just apply to possession but also to access to a dog. However, as we cannot have legislation that seems to punish people who have not offended (the wife of a person convicted of badger digging might argue that she is being punished for her husbands actions by being prevented from keeping a dog) we suggest that consideration should be given to extending such disqualifications to include having control of an animal;
- ❖ forming an Expert Witness Register of accredited experts available to police forces and the RSPCA to ensure a Badger Expert can be involved with an incident from the very beginning. This will ensure the police/RSPCA are expertly advised about how to collect, preserve and present evidence and be effective in assisting to achieve successful prosecutions. For the Register to be worthwhile experts must be available locally, at reasonable cost and the integrity of those on it must be beyond reproach. There must be an understanding from the outset that such a panel must operate with the welfare of the animal at heart. If commercial rates were to be charged then many Police forces would decline to seek the expertise. There would have to be a balance ensuring that such experts are not out of pocket when providing assistance but do not look on the matter as a means of income generation.

A form of Accreditation for badger experts is vital. At present, when a Badger Expert is in court acting as an Expert Witness, defence barristers will often attempt to discredit evidence by focussing on the fact that the Expert Witness does not have a formal qualification on badgers;

- ❖ although we would like to see legal protection for badger foraging areas, we feel that it would be impracticable as it would impact on human activity far more than current legislation. For example, in cases where badgers dig up lawns, which is very common in gardens of new houses in fringe developments as they are very often built within badger foraging areas, we can hardly turn round and tell people they will have to allow their lawns to be dug up. We therefore conclude that in many cases such protection would be unenforceable and be held in contempt.

Badgers fall prey to blood sport revival

20,000 die in slaughter of the badgers

Mark Townsend, The Observer, Sunday June 16, 2002

Badger-baiting has become Britain's deadliest blood sport, with a record 20,000 deaths forecast this year.

An unexpected resurgence in the gruesome pursuit, in which dogs are set on badgers, has prompted the RSPCA and the police to launch the first national campaign next month aimed at capturing offenders. A £1,000 reward will be offered for anyone with information leading to a conviction for badger-baiting.

Chief Inspector Terry Spamer, of the RSPCA's special intelligence unit, said there had been an 'explosion' in killings of the protected species, Britain's largest carnivorous mammal, particularly in Wales, Lancashire, Yorkshire and Scotland.

The RSPCA has collated intelligence on 4,000 individuals suspected of involvement in the practice.

A decade after the introduction of the Protection of Badgers Act, 1992, the comeback of badger-baiting has stunned animal welfare groups. The estimated death toll this year is double last year's, and far higher than the 13,987 foxes officially killed by hunts last season.

'It has become very prevalent in the last few months after dying off in the Eighties and Nineties,' said Spamer.

Police and the RSPCA are exasperated at the low number of successful convictions - five last year and not one to date in Scotland.

Highly organised gangs across the UK use terriers fitted with tracking devices to trap badgers in their underground setts. Once a badger is cornered, a pit is dug and terriers are dropped in to fight the animal, which is fearsome when cornered and attacked.

To give the dogs a chance, gangs often remove the claws and teeth of the badger or cut the hamstrings in its legs to ensure a closer, longer fight.

Evidence is also growing that some badgers are being transported back to gambling dens in cities, where up to £40,000 is reported to have changed hands on a fight.

Mike Sharratt, of Badger Watch in west Wales, said badgers had been sold for up to £500 to feature in such fights. *(Details of one such case when a person was found to be transporting a live badger can be found on the next page.)*

'These gangs operate very quickly. Once a badger is removed from its sett, it is often stabbed, shot or kicked and put in a sack for baiting later,' he said.

The killing upsurge comes amid calls for badger cruelty to be a recordable offence. More than 50 MPs are backing moves for legislation to be amended. They also want a loophole closed which prevents the police from investigating reports of badger-baiting on farms unless the landowner gives permission.

Officers believe some farmers encourage the killing of badgers on their land because they suspect that bovine tuberculosis is spread from badgers to cattle.

The maximum sentence for baiting is six months' imprisonment and a £5,000 fine.

Guardian Unlimited © Guardian Newspapers Limited 2002

There is no doubt that some farmers, who believe badgers are responsible for the spread of Bovine Tuberculosis, invite badger diggers onto their land and this has definitely contributed to the increase in the number of cases of badger persecution. (Source: RSPCA Special Operations Unit)

APPENDIX 2.

EXAMPLE OF AN INCIDENT THAT PROVES BADGERS ARE BEING DUG OUT AND TRANSPORTED ELSEWHERE FOR BAITING.

Name - Mackin, Desmond Joseph - a well known terrier breeder and judge (formally an official representative of the Fell and Moorland Working Terrier Club).

Address - Castle Lodge, Banbridge, County Down **Age/D.O.B.** - 43

Convicted - 6/10/97 **Magistrates** - Darlington

Penalty - 4 months **Also convicted** - Alone

NOTES

A haulier was sentenced to four months in prison and banned from keeping any animal for five years after being caught unlawfully transporting a live badger. Mackin pleaded guilty to charges of possession of a badger and ill-treating a badger at Darlington Magistrates Court on 6/10/97.

He was driving a HGV and was meeting with two known badger diggers from the north-east in a parking area having just come off a ferry from Northern Ireland. Mackin was arrested by Durham police after being chased and subsequently stopped in his lorry by a traffic patrol car on the A66 at Bowes Moor on 11/1/97 after the meeting was disturbed in the early hours of the morning. It sparked a national security alert as Mackin was a suspected terrorist. Police requested RSPCA assistance after discovering a live badger tied up in a sack in the back of the lorry. A stun gun was also seized.

An inspector of the RSPCA's Special Operations Unit, who assisted Durham police, said: "This is an extremely important case. It confirms our suspicions that badgers are being dug out and transported elsewhere for baiting. The badger was found tied up and covered in mud in the middle of the loaded wagon and we believe it had been driven all the way from Northern Ireland to be baited over here". The sow badger was later found to be pregnant and after recovering from the ordeal gave birth to three cubs. After rehabilitation, the sow along with all the cubs were successfully released into the wild in the South of England.