

## Protection of Badgers Act 1992 (as amended)

### Interpretation<sup>1</sup> of ‘Disturbance’ in relation to badgers occupying a sett



#### What is disturbance?

Section 3(e) of the Protection of Badgers Act 1992<sup>2</sup> makes it an offence for a person to interfere with a badger sett by *disturbing* a badger that is occupying the sett.

There are two elements to this offence:

1. There must be an action, capable of disturbing a badger, which amounts to an interference with a sett; and
2. a badger must be occupying the sett at the time of the disturbance.

The latter point is a question of fact i.e. was there or was there not a badger occupying the sett when the alleged offence or action took place? However, what constitutes an act capable of disturbing a badger occupying a sett is more difficult to determine.

The Act does not define either interference or disturbance and we are not aware of any case law on the meaning of section 3(e) of the Act. We therefore have to rely on the ordinary everyday meaning of the words. The Oxford English Dictionary defines “to disturb” as:

- To agitate and destroy (quiet etc);
- To break up the quiet, tranquillity;
- To stir up, trouble, disquiet, to agitate; to unsettle;
- To agitate mentally;
- To interfere with the settled course of operations.

Disturbance is therefore something less than what might otherwise be considered damage to a sett - this distinction is recognised by the existence of two separate offences in the Act; one where there is damage to a sett and one for disturbance to a badger occupying a sett. However, it is also something more than limited noise or activity near a sett at levels which badgers commonly tolerate, without apparently being disturbed.

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<sup>1</sup> This guidance relates solely to England. Different interpretations may exist in Wales and Scotland and the relevant licensing bodies in those countries should be consulted for advice.

<sup>2</sup> Protection of Badgers Act 1992 ([www.opsi.gov.uk/acts/acts1992/Ukpga\\_19920051\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1992/Ukpga_19920051_en_1.htm))

### **What constitutes “disturbance” to a badger occupying a sett?**

The offence of disturbing a badger whilst it is occupying a sett has given rise to considerable debate over the years. The issue presents problems, not only in determining what might constitute disturbance, but also in proving that any badger had actually been disturbed.

However, some general conclusions about the tolerance of badgers to potential disturbance at or near their setts can be drawn from their status throughout much of England and the situations in which they can be found. For example, badgers live in urban as well as rural areas, they are widespread and common, and they create setts under roads and railways and in urban gardens well used by children and pets. They therefore appear to be able to withstand significant amounts of noise or activity near to their setts without apparently being disturbed.

### **Natural England licensing of “disturbance” at badger setts**

Natural England therefore believes that badgers are relatively tolerant of moderate levels of noise and activity around their setts and that low or moderate levels of apparent disturbance at or near to badger setts do not necessarily disturb the badgers occupying those setts. As such, we do not believe that such levels of apparent disturbance around setts require a licence under section 10 of the Act.

In reaching this view, we have also taken account of the fact that we do not believe that the issue of licences for “trivial” levels of apparent disturbance at setts, which are likely to have little or no effect on any badgers present, brings any conservation or other tangible benefits or is necessary in terms of the potential impact on the badgers. On the other hand, it can represent an unnecessary burden on businesses or individuals worried that their actions may “disturb” badgers occupying such setts.

Some examples of activities at or near setts that we do not consider likely to cause disturbance to badgers, and therefore would not normally expect to require a licence, include:

1. Development, or other activities occurring close to badger setts (use of hand tools and/or machinery), where there is no reason to believe that the ‘disturbance’ will be greater than that which badgers commonly tolerate, and therefore any badger(s) occupying the sett are unlikely to be disturbed;
2. Vegetation removal (including felling small trees or shrubs) over or adjacent to setts (using hand tools and/or machinery);
3. Clearing out of ditches/watercourses using machinery and/or hand tools where badger setts are present.

Persons involved in activities near setts will need to exercise judgement as to whether their action may or may not cause disturbance to badgers.

**N.B. Any activity that will, or is likely to cause one of the other interferences defined in Section 3 (such as damaging a sett tunnel or chamber or obstructing access to a sett entrance) will continue to need to be licensed.**

### **Contact Details**

Further advice may be obtained from the Wildlife Management and Licensing Team on 0845 6014523 (local rate) or email [wildlife@naturalengland.org.uk](mailto:wildlife@naturalengland.org.uk). This information is also provided on our website [www.naturalengland.org.uk/ourwork/regulation/wildlife](http://www.naturalengland.org.uk/ourwork/regulation/wildlife)

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