

Strasbourg, 16 March 2020  
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**T-PVS/Files(2020)22**

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

40<sup>th</sup> meeting  
Strasbourg, 1-4 December 2020


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**Other complaints**

**Badger Culling Policy in England  
(United Kingdom)**

**- COMPLAINT FORM -**

*Document prepared by  
The Born Free Foundation UK, The Badger Trust UK, and Eurogroup For Animals, Brussels*

<b>Convention on the Conservation of European Wildlife and Natural Habitats</b>	
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**COMPLAINT FORM**

**NB:** Complaint forms must be submitted in electronic word format, and not exceed 3 pages, including the first administrative page. A maximum 5-page report can be attached. The Secretariat will request additional information on a case-by-case basis.

Please, fill in this form and send it to the attention of:

**Iva OBRETENOVA**

Directorate of Democratic Governance, Culture and Diversity

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Date : **24th July 2019**

Electronic Signature



**1. Please state the reason of your complaint (refer also the Contracting Party/es involved and the Articles of the Convention which might be violated).**

Following the UK Government's announcement to introduce wide scale culling of badgers in England as part of its strategy to control bovine tuberculosis (bTB) in cattle in 2011<sup>1</sup>, England has significantly expanded the badger culling policy, issuing an increasing number of cull licenses across increasing geographical areas since 2013. While the approach varies across the devolved nations of the United Kingdom, this complaint specifically concerns the strategy adopted in England by the Westminster Government (hereafter referred to as 'the Government').

A report commissioned by the Government in October 2018 concluded that the threat of badgers infecting cattle with TB is "modest" ('the Godfray Review')<sup>2</sup>. Nowhere in this report, which was intended to review England's current strategy for control of bTB, was it stated that badger culling is necessary for this aim. However, the issuance of cull licenses is expected to continue through 2019 and beyond, in accordance with current policy.<sup>34</sup>

The Born Free Foundation, the Badger Trust and Eurogroup for Animals, are of the opinion that the Government's badger culling policy is in breach of Articles 7 and 8 of the Conservation of European Wildlife and Natural Habitats (the Bern Convention, hereafter referred to as 'the Convention'), and does not benefit from an exemption under Article 9 of the Convention.

The Government's policy not only negatively impacts the European badger species, but it fails to effectively tackle the disease of bTB for cattle farmers who are supposed to benefit from it. There is increasing evidence that the current policy is not fit for purpose, as detailed in the attached Report.

**Overview of Grounds**

The European badger (*Meles meles*) is an Annex III species under the Convention, and is therefore afforded the protection specified in Articles 7 and 8. Article 9 sets out circumstances where exceptions to these provisions may be made, provided certain conditions are met.

Breach of Article 7 In accordance with the criteria established for Appendix III species under the 2014 Guidance for Complainants, using badgers (*Meles meles*) as a model: **1. There is clear evidence to show that the measures undertaken by the Government for the exploitation of badgers jeopardises the population concerned**

**2. There is clear evidence to show that the exploitation is not monitored by the Government**

**3. The exploitation of badgers has a negative impact on other species that are protected by the Convention**

Breach of Article 8 **4. The exploitation of badgers is indiscriminate, and capable of causing local disappearance of the population**

Breach of Article 9 **5. The Government has failed to choose the most appropriate alternative, amongst possible alternatives, and has failed to be objective and verifiable in its reasoning for this decision**

**6. The Government has failed to base the policy on current data on the state of the population, including its size, distribution, state of habitat and future prospects**

**7. The Government has failed to demonstrate that the measures undertaken by the Government involving the exploitation of badgers is in place to prevent serious damage to livestock**

<sup>1</sup> 2011 Policy, ANNEX 5

<sup>2</sup> Godfray Review, ANNEX 2

<sup>3</sup> See licenses authorised to date during 2019: <https://www.gov.uk/government/publications/bovine-tb-authorisation-for-supplementary-badger-control-in-2019> and the 32 licenses granted through 2018:

<https://www.gov.uk/government/publications/bovine-tb-authorisation-for-badger-control-in-2018>

<sup>4</sup> For policy details see 2018 Guidance to Natural England: <https://www.gov.uk/government/publications/guidance-to-natural-england-preventing-spread-of-bovine-tb>

**8. The Government has failed to submit biennial reports to the Secretariat in connection with the exceptions**

Please see the attached Report and appendices for further detail on the complaint grounds.

**2. Which are the specific specie/s or habitat/s included in one of the Appendices of the Bern Convention potentially affected? (Please include here information about the geographical area and the population of the species concerned, if applicable)**

The principle species involved is the European badger (*Meles meles*), which is listed in Appendix III of the Convention. Other species are also potentially affected by the Government's badger culling policy, as detailed in the attached Report.

Habitats or geographical areas cover a number of counties in England, with the potential to extend further under the existing policy.

**3. What might be the negative effects for the specie/s or habitat/s involved?**

Reduction in numbers, leading to a risk of local extirpation, and serious population decline at a national and European level, as cull areas are expanded across the country, as detailed in the attached Report.

**4. Do you know if potentially affected species or habitats also fall under the scope of other international Conventions, (for instance: RAMSAR, CMS, ACCOBAMS, Barcelona Convention, etc) or if the area has been identified as a NATURA 2000/Emerald network site?**

Potentially impacted bird species within sites of international importance also fall under RAMSAR. This is in relation to Sites of Special Scientific Interest (SSSI). Following a Judicial Review appeal in 2019, a High Court judge ruled that the Government has not been doing enough to monitor the impact of badger culling on non target species in SSSIs.<sup>5</sup> The appeal judgment is yet to be published. To date the Government has failed to publish data on this. As culling licenses continue to expand geographically additional sites could be impacted.

**5. Do you know if there are any pending procedures at the national or international level regarding the object of your complaint?**

See point 4 above in relation to Judicial Review proceedings.

**6. Any other information (existence of an Environmental Impact Assessment (EIA), size of projects, maps of the area, etc)**

The existence of Environmental Impact Assessments is unknown, and maps are not publically available. Please see attached Report for further information in connection with this Complaint.

<sup>5</sup> <https://www.endsreport.com/article/1579243/judge-says-natural-england-failed-assess-impacts-badger-cull-birds-sssis>

### **Additional materials**

In relation to the complaint submitted on 24th July 2019 proposing that the UK government's badger culling policy is in breach of Articles 7, 8 and 9 of the Bern Convention, the complainants would like to draw attention to the following additional information and materials that have come to light since the original submission.

On 5th March 2020, the UK government published a document entitled "Next steps for the strategy for achieving bovine tuberculosis free status for England" ([Annex A](#)), in response to the independent strategy review commissioned by government in 2018 and conducted under the chairmanship of Professor Sir Charles Godfray of Oxford University ([Annex B](#)). The government's document contains proposals for additional cattle-based measures, including plans to licence a cattle vaccine against bovine TB within 5 years, a focus on improving cattle testing sensitivity to help identify the tens of thousands of infected cattle that are missed by the insensitive skin test every year ([Annex C](#)), and stricter risk-based trading and biosecurity measures to ensure cattle farming and trading practices do not result in the spread of infection. The document also recognises that badgers are an iconic species, and that culling cannot go on forever; it talks of the need to identify an exit policy from badger culling, and its gradual replacement by government-supported badger vaccination and surveillance.

However, in the document the UK government repeatedly claims that widespread intensive badger culling has produced significant disease control benefits, ignoring its own up-to-date data on bovine TB in cattle which clearly shows that, in areas where badgers have been targeted for seven consecutive years, the proportion of infected cattle herds remains roughly unchanged. Indeed in the original Gloucestershire cull zone the number of new disease outbreaks among cattle herds in the year to September 2018 was higher than the equivalent period in 2013 when culling first started. ([Annex D](#))

There is little evidence to justify claims that badger culls have resulted in significant disease control benefits. Yet the document published by the UK government sets out plans to significantly extend the coverage of intensive badger culls, which could see badgers being targeted across 27,000 km<sup>2</sup> by 2021. It also indicates that intensive culling will continue to be licenced in the High Risk and Edge areas "where needed over the next few years".

We therefore submit that the UK government continues to be in breach of its obligations under the following Articles of the Bern Convention:

#### Breach of Article 7

In accordance with the criteria established for Appendix III species under the 2014 Guidance for Complainants, using badgers (*Meles meles*) as a model:

- 1. There is clear evidence to show that the measures undertaken by the Government for the exploitation of badgers jeopardises the population concerned**
- 2. There is clear evidence to show that the exploitation is not monitored by the Government**
- 3. The exploitation of badgers has a negative impact on other species that are protected by the Convention**

#### Breach of Article 8

- 4. The exploitation of badgers is indiscriminate, and capable of causing local disappearance of the population**

#### Breach of Article 9

- 5. The Government has failed to choose the most appropriate alternative, amongst possible alternatives, and has failed to be objective and verifiable in its reasoning for this decision**
- 6. The Government has failed to base the policy on current data on the state of the population, including its size, distribution, state of habitat and future prospects**
- 7. The Government has failed to demonstrate that the measures undertaken by the Government involving the exploitation of badgers is in place to prevent serious damage to livestock**

**8. The Government has failed to submit biennial reports to the Secretariat in connection with the exceptions**

Please see the Report and appendices submitted with the original complaint in July 2019 for further detail on the complaint grounds.

[Annex A: Next steps for the strategy for achieving bovine tuberculosis free status for England. UK Department of Environment, Food and Rural Affairs. March 2020.](#)

[Annex B: Bovine TB strategy review : Report to Rt Hon Michael Gove MP, Secretary of State, DEFRA. October 2018.](#)

[Annex C: Huge reservoir of undetected bTB infection found. Veterinary Record, October 2019.](#)

[Annex D: Cattle infectivity is driving the bTB epidemic. Veterinary Record, December 2019.](#)

## Report

### **Complaint under the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) Relating to the Badger Culling Policy in England**

*24 July 2019, by the Born Free Foundation, the Badger Trust and Eurogroup For Animals*

This report details the complaint grounds, and is numbered 1-8 in accordance with the grounds contained in question 1 of the submitted complaint form. It is limited in length as per the form requirements.

#### **1. Population in Jeopardy (Article 7)<sup>6</sup>**

Since 2013 over 67,000 badgers have been killed under licence in England under the Government's culling policy. The numbers have been increasing year on year. In 2016, a total of 10,886 badgers were culled. This figure almost doubled to over 19,250 in 2017, and totalled over 32,600 through 2018.<sup>7</sup>

The Government has since announced the continuation and geographical expansion of culling, including 'supplementary culls' in areas that have completed four years of culling under their original licenses, requiring that the (estimated) badger population of each licenced area be reduced by at least 70% at a local level.<sup>8</sup> The Government commissioned 2018 Bovine TB Strategy Review ('The Godfray Review'), stipulates that if the current policy continues with (a minimum of) 10 new cull licenses per year over the next 4 years (in accordance with current policy), approximately 40,600 additional badgers will be killed every year.<sup>9</sup> This figure is expected to be higher because supplementary cull licenses are also being issued in areas that have completed four years of culling.<sup>10</sup> More information on the policy background can be provided on request.

The lack of accurate data on badger populations is a persistent problem. This is due to the infrequency of assessments, and inadequate assessments made (*see Ground 6, below*). The Government estimated a population of 485,000 across **both** England and Wales in 2018.<sup>11</sup> This is not stated to be accurate however, and difficulties in calculating populations has been expressed by the Government.<sup>12</sup> The expanded culls, and continued failure to accurately grasp population numbers, is a significant concern for the following reasons:

- A) **The cull policy jeopardises badger populations at a local, national and European level;** the UK has the largest viable badger population in Europe. Further, there are additional population threats across Europe to consider; for example, there is ongoing pressure to grant badger hunting licenses in France.<sup>13</sup>

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<sup>6</sup> In accordance with: p3-4, 2014 Guidance (available at: <https://rm.coe.int/1680746b6b>)

<sup>7</sup> **ANNEX 1:** This figure is calculated through BornFree keeping a running total of yearly figures produced by the Government's annual reports which can be found at: <https://www.gov.uk/search?q=summary+badger>

<sup>8</sup> p4, paragraph 9.d.i, Guidance to Natural England on licensed badger control... (available at: [https://consult.defra.gov.uk/bovine-tb/supplementary-badger-disease-control/supporting\\_documents/Consultation%20Document.pdf](https://consult.defra.gov.uk/bovine-tb/supplementary-badger-disease-control/supporting_documents/Consultation%20Document.pdf))

<sup>9</sup> p65, paragraph 6.31, **ANNEX 2**

<sup>10</sup> **ANNEX 3:** Example of 2019 supplementary license authorisation letter, totalling 540 maximum number of badgers to be killed, AND Government license information page: [https://www.gov.uk/government/publications/bovine-tb-authorisation-for-supplementary-badger-control-in-2019?utm\\_source=37e16a4c-f9e0-49b2-b167-78fcdc70d858&utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_content=immediate](https://www.gov.uk/government/publications/bovine-tb-authorisation-for-supplementary-badger-control-in-2019?utm_source=37e16a4c-f9e0-49b2-b167-78fcdc70d858&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate)

<sup>11</sup> p61, paragraph 6.12, **ANNEX 2**

<sup>12</sup> For example: p65, paragraph 6.32 **ANNEX 2;** and **ANNEX 4:** Government response to Request for Information: Badger Population Size and bTB Incidence, 1 May 2014

<sup>13</sup> <https://www.notre-planete.info/actualites/4436-blaireau-chasse-cruelle> and <https://www.aspas-nature.org/actualites/deterrage-blaireaux-france-interdiction/>

- B) There is a **culmination of badger population threats**. These include: road deaths (approximately 50,000 per year in the UK<sup>14</sup>); building development, which is very fast moving in the UK; illegal persecution, such as badger baiting (approximately 10,000 deaths per year<sup>15</sup>) and climate impacts, for example heat waves (which result in low survival rate for badger cubs, and can be detrimental to the survival of adult badgers, whilst food is scarce.<sup>16</sup>) The population impacts of badger culling cannot be viewed in isolation.
- C) It is not just a question of numbers. **Badger presence alone is not enough to keep the population out of jeopardy**; maintenance of their complex social groups is key to continued breeding. The indiscriminate 70% local population reduction fails to take this into account.

These concerns are in accordance with the Council of Europe's 2012 statement that "the (even if remote) possibility of local disappearance could definitely be in contrast with the philosophy of a convention which aims to conserve wild fauna."<sup>17</sup>

## 2. Failure to Monitor (Article 7)<sup>18</sup>

Despite listing a number of monitoring measures in its 2011 culling policy<sup>19</sup>, the Government is failing to monitor the culling of badgers under its policy. In breach of Article 7, the Government has failed to put in place appropriate administrative and regulatory measures to ensure that the population is out of danger. For example:

- A) **A very small proportion of culling activities is being monitored** according to Government records. For example, the published cull numbers for 2018 (excluding supplementary culls) show that of the 20,637 badgers killed by 'controlled shooting,'<sup>20</sup> only 89 incidents were monitored for compliance by Natural England (the responsible body).<sup>21</sup> This totals less than 0.5%, which is an extremely low level.
- B) **Badger numbers pre and post cull are not monitored effectively.** (*See Ground 6, below*)
- C) **The evaluation of culls as a monitoring tool is inadequate.** (*This overlaps with Ground 5, below*). For example, post-mortem testing on badgers is not a key part of the culling policy. The 2011 policy explicitly excludes reporting on the prevalence of TB in culled badgers,<sup>22</sup> and Government stated in 2014 that "TB testing in culled badgers was not undertaken as a routine procedure during the pilot culls."<sup>23</sup> Although recent policy states that "culled badgers will be

<sup>14</sup> Road Deaths Survey 2000-2001, The Mammal Society (available at: <https://www.mammal.org.uk/science-research/surveys/>); Note: the badger is reported to be the most common wild mammal killed on UK roads in 2019: <https://www.bbc.co.uk/news/science-environment-48886673>

<sup>15</sup> point 9, Wildlife Crime report submitted to the UK Parliament by the International Fund for Animal Welfare, 2004: <https://publications.parliament.uk/pa/cm200304/cmselect/cmenvaud/605/605we07.htm>

<sup>16</sup> <https://www.wildcru.org/research/the-effects-of-weather-conditions-on-badger-population-dynamics/> AND <https://inews.co.uk/news/environment/how-the-hot-weather-is-dividing-nature-into-winners-and-losers/> AND <https://www.independent.co.uk/news/uk/home-news/uk-heatwave-wildlife-hedgehogs-frogs-birds-sun-hot-temperature-climate-change-a8466891.html>

<sup>17</sup> Meeting of the Bureau, 23 April 2012 (available at: <https://rm.coe.int/09000016807468c8> )

<sup>18</sup> In accordance with: p3-4, 2014 Guidance (available at: <https://rm.coe.int/1680746b6b> )

<sup>19</sup> Section 6, 2011 Policy, **ANNEX 5**

<sup>20</sup> As calculated from total in column 5 of table across page 2 & 3: Summary of badger control operations during 2018, December 2018 (available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/765439/badger-control-monitoring-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765439/badger-control-monitoring-2018.pdf) )

<sup>21</sup> p3, Summary of badger control operations during 2018, December 2018 (available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/765439/badger-control-monitoring-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765439/badger-control-monitoring-2018.pdf) )

<sup>22</sup> p35, Section 6, 2011 Policy **ANNEX 5**

<sup>23</sup> p3, Government response to Request for Information: Culled Badger Post Mortems, 17 July 2014 (available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/341774/Binder\\_6678.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/341774/Binder_6678.pdf)



tested...to inform future disease control measures,”<sup>24</sup> there is no indication of the extent or timescales of this proposal.

- D) **There is ineffective evaluation of the impact of badger culling on bovine TB incidence or prevalence in cattle**, which, after all, is the main purpose of the policy. (*see Ground 5, below*).

### 3. Impact on Other Species (Article 7)<sup>25</sup>

There is increasing evidence that a range of species and habitats listed in Appendix I and II of the Bern Convention may be directly or indirectly impacted by badger culling, including mammals and migratory and resident birds. In particular, there are findings that badger culling increases fox numbers, which in turn threaten ground nesting birds and hares.<sup>26</sup> The Government has failed to fully address these concerns in forming its policy, despite the wider ecological risks being known for some time. More information can be provided on request.

The Government must take urgent steps to address this. The UK’s biodiversity has been found to be particularly fragile, identified as having “lost significantly more nature over the long term than the global average.”<sup>27</sup>

### 4. Indiscriminate Means, Causing Local Disappearance of Badgers (Article 8)<sup>28</sup>

When cull licenses are granted by Natural England there is no effort made to establish whether targeted badgers carry infection, or even whether they belong to a social group in which infection has been identified.<sup>29</sup> Further, as the culling is expanded, more and more badgers are being killed without regard for whether or not they have bTB. This is non-selective, thereby indiscriminate and capable of causing local disappearance of populations of badgers.<sup>30</sup>(*See Ground 1, above*). More information can be provided on request.

**On the basis that the Government has breached Articles 7 and 8, it must invoke an exception under Article 9. It has failed to do so.**

### 5. Failure to Satisfy Article 9 (General Condition): No Other Satisfactory Alternative<sup>31</sup>

The Government has failed to choose, among possible alternatives, the most appropriate action, which will have the least adverse effects on the species while solving the problem.<sup>32</sup> The Government has also failed to alter the policy in light of the lack of evidence that badger culling has a substantial impact on bovine TB in cattle, which is the policy’s primary purpose. There is no evidence to show that culling is working. The European Food Safety Agency (EFSA), in the scientific opinion adopted on 30 June 2017, stated that: “In Europe, widespread indiscriminate culling of the important

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<sup>24</sup> Setting the minimum and maximum numbers in badger cull areas in 2018: Advice to Natural England, Published 13 September 2018 (available at: <https://www.gov.uk/government/publications/advice-to-natural-england-on-setting-minimum-and-maximum-numbers-of-badgers-to-be-controlled-in-2018/setting-the-minimum-and-maximum-numbers-in-badger-cull-areas-in-2018-advice-to-natural-england> )

<sup>25</sup> In accordance with: paragraph 35, Explanatory Report (to the Bern Convention) (available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800ca431> )

<sup>26</sup> ANNEX 6, And see: Trewby *et al*, 2008 (available at: <https://royalsocietypublishing.org/doi/10.1098/rsbl.2007.0516>)

<sup>27</sup> p6, State of Nature UK Report 2016, (available at: <https://www.rspb.org.uk/globalassets/downloads/documents/conservation-projects/state-of-nature/state-of-nature-uk-report-2016.pdf> )

<sup>28</sup> In accordance with: paragraph 38, Explanatory Report (to the Bern Convention) (available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800ca431> )

<sup>29</sup> For example, see: 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. May 2018 (available at: <file:///C:/Users/Ali/Downloads/tb-licensing-guidance-ne.pdf> )

<sup>30</sup> In accordance with: p3, I.1, Revised 2011 Resolution (available at: <https://rm.coe.int/16807461dd> )

<sup>31</sup> In accordance with: Article 9(1), Bern Convention (available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680078aff> )

<sup>32</sup> In accordance with: p3, point 7, Revised 2011 Resolution (available at: <https://rm.coe.int/16807461dd> )

wildlife hosts of bovine tuberculosis is unlikely to offer an effective solution on its own.”<sup>33</sup> Further, as pointed out by the Independent Scientific Group (ISG), charged with evaluating the Randomised Badger Cull Trial (RBCT) in the UK in 2007: “Examinations of infection rates in cattle and in badgers, theoretical explanations of the possibilities of infection transmission between the two species, evidence of transmission under experimental conditions, circumstantial evidence of links between herd breakdowns and badger populations, and anecdotes and documented cases of where badger culling has ‘worked’, do not amount to a sufficient scientific basis upon which to build a generalised disease control policy.”<sup>34</sup> There is still no substantial or respectable body of science contradicting the conclusions of the ISG.

**Weighty evidence suggests a number of appropriate, viable and more satisfactory alternatives.** The Government commissioned Godfray Review emphasised that alternative approaches to combating bTB have been neglected in policy. Part of the conclusions are that cattle-to-cattle transmission is still the biggest factor; and that “it is wrong... to over-emphasise the role of wildlife.”<sup>35</sup>

Whilst some Government funding has gone into improving cattle biosecurity measures for example, this does not compare to the resources put into badger culling (further information can be provided on request). Of key concern is emerging evidence that the Government approved primary TB testing method for cattle (‘SICCT’) is failing to diagnose around half of the cattle infected.<sup>36</sup> This creates a reservoir of unidentified infected cattle remaining in herds, and being traded across the country. This is all the more concerning in view of a recent survey that found that only 30% of farms in ‘High Risk Areas’ have taken **any** basic biosecurity steps to prevent bTB; a reflection of the Government’s failings to engage and support farmers with satisfactory action.<sup>37</sup>

If the objective of the current policy is to reduce bTB prevalence among badgers, badger vaccination offers a more reliable and less destructive way of achieving this. It is a non-lethal, and more effective way of reducing TB in the badger population. The Government has good scientific data to prove badger vaccination works but has not put the necessary resources into promoting this as an alternative approach to culling to farmers and livestock vets.<sup>38</sup> Further information can be provided on request.

Looking to neighbouring Wales, bTB incidence and recurrence in cattle herds has been shown to have dropped in comparison to England, through the implementation of strict cattle-based measures, and without introducing indiscriminate badger culling.<sup>39</sup> Further information can be provided on request.

**The Government has failed to be objective and verifiable in its reasoning for the badger culling policy.**<sup>40</sup> The Bureau pointed out in discussing a complaint made previously against the badger culling policy, that: “in the case of bTB, economic arguments are surely weighing on the debate and

<sup>33</sup> p22, The European Food Safety Agency (EFSA) scientific opinion adopted on 30 June 2017: ‘Assessment of listing and categorisation of animal diseases within the framework of the Animal Health Law (Regulation (EU) No 2016/429): bovine tuberculosis’ (available at: <https://efsa.onlinelibrary.wiley.com/doi/pdf/10.2903/j.efsa.2017.4959>)

<sup>34</sup> p30, 1.11, **ANNEX 7**

<sup>35</sup> p1, point 4, **ANNEX 2**

<sup>36</sup> **ANNEXES 8 & 9**, and: <https://www.fwi.co.uk/livestock/health-welfare/livestock-diseases/bovine-tb/5-ways-to-improve-tb-control-in-the-uk>

<sup>37</sup> <https://www.fginsight.com/news/news/failure-to-improve-biosecurity-as-british-farmers-ignore-bovine-tb-advice-88895> AND <https://www.fwi.co.uk/livestock/health-welfare/livestock-diseases/bovine-tb/5-ways-to-improve-tb-control-in-the-uk>

<sup>38</sup> **ANNEXES 10 & 11**, and : <https://www.thecanary.co/discovery/analysis-discovery/2019/02/12/one-group-of-farmers-shows-there-is-an-alternative-to-killing-badgers/>

<sup>39</sup> For example, 21 of the 59 herds for which such action plans were implemented had TB restrictions lifted in 2018: paragraph 285, Oral Statement by Lesley Griffiths, the Welsh Government’s Minister for Environment, Energy and Rural Affairs, of 30 April 2019 (available at: <https://gov.wales/oral-statement-bovine-tb-eradication-programme-1>); Bovine TB statistics for Great Britain are available at: <https://www.gov.uk/government/statistics/incidence-of-tuberculosis-tb-in-cattle-in-great-britain>

<sup>40</sup> In accordance with: p3, point 7, Revised 2011 Resolution (available at: <https://rm.coe.int/16807461dd>)

may influence political decisions.<sup>41</sup> The Government's objectivity is clearly questionable. Further, there are substantial verifiability failings.

For example, whilst the Government continues to rely on the results of the RBCT in order to justify its policy, it ignores the fact that the principal conclusion of the Independent Scientific Group that oversaw the RBCT was that "badger culling can make no meaningful contribution to cattle TB control in Britain."<sup>42</sup> In addition, the current policy differs markedly in many respects from the conditions of the RBCT. The Government was warned by a meeting of experts in April 2011 that: "the more that a future culling policy deviates from the conditions of the RBCT - e.g. industry versus government led and/or culling methods (such as permitting controlled shooting of badgers in addition to cage-trapping), the more likely it is that the effects of that policy will differ, either positively or negatively, and with potential variability in outcome between areas."<sup>43</sup> The Government continues in its failings to demonstrate the benefits of the current policy. In a recent example, it was explicitly requested that the Government commissioned Godfray Review did not assess the effectiveness of badger culls since 2013.<sup>44</sup>

There is no scientific basis for the supplementary culling other than the false position of keeping badger numbers down to a perceived level of control. Of the minimal testing for TB carried out on culled badgers, Government figures from August 2018 found only 3 out of 46 badger carcasses tested positive.<sup>45</sup> These findings are separate from any assessment of whether badgers can transfer TB to cattle (which remains inconclusive).

Substantial inconsistencies exist in Government policy documentation. For example, in a clear contradiction to the recent 'Low Risk Area' culling policy<sup>46</sup>, the Government had previously stated: "if the policy is rolled out more widely, culling would only take place in control areas within the High Risk Area of England (where the TB situation in cattle is worse)."<sup>47</sup> More recently, unsupported claims have been made by Government that badger culling is working in the counties of Somerset and Gloucestershire (with no verifiable scientific evidence in support).<sup>48</sup> Yet, this is contradicted in the report by the Animal and Plant Health Agency (an executive agency of Defra<sup>49</sup>) which clearly states that: "These data alone cannot demonstrate whether the badger control policy is effective in reducing bovine TB in cattle."<sup>50</sup> A detailed examination of the Government's data<sup>51</sup> concludes that there has

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<sup>41</sup> p17, 23 April 2012 Meeting of the Bureau (Available at: <https://rm.coe.int/09000016807468c8> )

<sup>42</sup> (*From A People's Manifesto for Wildlife*): Bourne, J., Donnelly, C.A., Cox, D.R., Gettinby, G., McInerney, J.P., Morrison, W.I., Woodroffe, R. (2007). *Bovine TB: The Scientific Evidence, a Science Base for a Sustainable Policy to Control TB in Cattle* ; Final Report of the Independent Scientific Group on Cattle TB Presented to the Secretary of State for Environment, Food and Rural Affairs. (Available at:

[http://webarchive.nationalarchives.gov.uk/20081108133322/http://www.defra.gov.uk/animalh/tb/isg/pdf/final\\_report.pdf](http://webarchive.nationalarchives.gov.uk/20081108133322/http://www.defra.gov.uk/animalh/tb/isg/pdf/final_report.pdf))

<sup>43</sup> point 3, Bovine TB - Key conclusions from the meeting of scientific experts 1, held at Defra on 4th April 2011 (available at: <http://www.bovinetb.info/docs/bovinetb-scientificexperts-110404.pdf> )

<sup>44</sup> <https://www.gov.uk/government/publications/a-strategy-for-achieving-bovine-tuberculosis-free-status-for-england-2018-review/bovine-tuberculosis-btb-strategy-review-2018-terms-of-reference>

<sup>45</sup> Setting the minimum and maximum numbers in badger cull areas in 2018: Advice to Natural England, Published 13 September 2018 (available at: <https://www.gov.uk/government/publications/advice-to-natural-england-on-setting-minimum-and-maximum-numbers-of-badgers-to-be-controlled-in-2018/setting-the-minimum-and-maximum-numbers-in-badger-cull-areas-in-2018-advice-to-natural-england> )

<sup>46</sup> See details, for example: Overview; Consultation on proposals to introduce licensed badger control to prevent the spread of bovine tuberculosis in the Low Risk Area (England), 2018 (available at: <https://consult.defra.gov.uk/bovine-tb/badger-control-in-low-risk-area-england/>)

<sup>47</sup> p4, Report by The Government: responding to Complaint No.2013/7 on presumed Risk of National Extinction of Badgers (Meles meles) in England (Available at: <https://rm.coe.int/090000168074638f> )

<sup>48</sup> New data shows drop in bovine TB as further measures to fight disease unveiled, 13 September 2018, (Available at: <https://www.gov.uk/government/news/new-data-shows-drop-in-bovine-tb-as-further-measures-to-fight-disease-unveiled>)

<sup>49</sup> The UK Department for Environment, Food and Rural Affairs

<sup>50</sup> Bovine TB in cattle: badger control areas monitoring report For the period 2013 - 2017, September 2018 (Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/750986/bovine-tb-in-cattle-badger-control-areas-monitoring-report-2013-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/750986/bovine-tb-in-cattle-badger-control-areas-monitoring-report-2013-2017.pdf) )

<sup>51</sup> APHA. Bovine TB in cattle: badger control areas monitoring report. 2018. Available at: [http://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/740003/bovine-tb-in-cattle-badger-control-areas-monitoring-report-2013-2017.pdf](http://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740003/bovine-tb-in-cattle-badger-control-areas-monitoring-report-2013-2017.pdf)

been no demonstrated reduction in TB linked to the badger culls. More information can be provided on request.

#### **6. Failure to Satisfy Article 9 (General Condition): Not Detrimental to the Survival of the Population Concerned<sup>52</sup>, Based on Current Population Data<sup>53</sup>**

There is a serious risk of detriment to the survival of the population due to the fact that licences are being granted on the basis of insufficient and inaccurate population data. Badger numbers pre and post cull are not being monitored effectively. The National Setts Survey method, by which Natural England has been establishing minimum and maximum numbers of badgers to be culled in each license, is flawed, as it overestimates badger numbers, and therefore increases the target number under the license. Multiplying “the number of active setts by the number of badgers per active sett”<sup>54</sup> is the method identified as the least accurate by an independent expert report.<sup>55</sup> The Government have themselves confirmed the inaccuracy of their population assessment methods, stating in September 2018: “we have not improved the method of setting initial minimum and maximum numbers as the methods based on the National Setts Survey in 2016 and 2017 have not been proven particularly accurate.”<sup>56</sup>

Other non-Government funded studies have shown that there are more accurate ways to estimate badger populations, such as including the study of social group size variation across larger landscape areas.<sup>57</sup> On the basis that there is more appropriate methodology available, the Government’s method does not meet the threshold required to constitute relevant data. These flawed population assessments are used by the Government in assessing the number of culling licenses to be granted year on year; raising concern for the impact on badger numbers (*as per Ground 1, above*).

#### **7. Failure to Satisfy Article 9 (Specific condition): Serious Damage to Livestock<sup>58</sup>**

The Government has failed to evaluate and demonstrate that TB transmission from badgers to cattle is a serious risk, or that its current badger culling policy will substantively mitigate any such risk. For example, the policy to expand badger culls to include ‘Low Risk Areas’ fails to be based on damage that in “all likelihood will occur.”<sup>59</sup> This policy was decided on the basis of: “the rare event that disease is present in badgers and is linked with infection in cattle herds.”<sup>60</sup> (*Also see Ground 5, above on badger TB testing, and verifiability*). More information can be provided on request.

#### **8. Derogation Reporting Failures under Article 9.2<sup>61</sup>**

<sup>52</sup> In accordance with: Article 9(1), Bern Convention (available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680078aff> )

<sup>53</sup> In accordance with: p4, point 7, Revised 2011 Resolution (available at: <https://rm.coe.int/16807461dd> )

<sup>54</sup> Setting the minimum and maximum numbers in badger cull areas in 2018: Advice to Natural England, Published 13 September 2018 (available at: <https://www.gov.uk/government/publications/advice-to-natural-england-on-setting-minimum-and-maximum-numbers-of-badgers-to-be-controlled-in-2018/setting-the-minimum-and-maximum-numbers-in-badger-cull-areas-in-2018-advice-to-natural-england> )

<sup>55</sup> p19, Pilot Badger culls in Somerset and Gloucestershire, Report by the Independent Expert Panel, March 2014, (available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300382/independent-expert-panel-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300382/independent-expert-panel-report.pdf) )

<sup>56</sup> Setting the minimum and maximum numbers in badger cull areas in 2018: Advice to Natural England, Published 13 September 2018 (available at: <https://www.gov.uk/government/publications/advice-to-natural-england-on-setting-minimum-and-maximum-numbers-of-badgers-to-be-controlled-in-2018/setting-the-minimum-and-maximum-numbers-in-badger-cull-areas-in-2018-advice-to-natural-england> )

<sup>57</sup> See: Abundance of badgers (*Meles meles*) in England and Wales, Judge et al, 21 March 2017 (Available at: <https://www.nature.com/articles/s41598-017-00378-3>)

<sup>58</sup> In accordance with: Article 9(1), Bern Convention (available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680078aff> )

<sup>59</sup> In accordance with: p6, point 16, Revised 2011 Resolution (available at: <https://rm.coe.int/16807461dd> )

<sup>60</sup> Overview; Consultation on proposals to introduce licensed badger control to prevent the spread of bovine tuberculosis in the Low Risk Area (England), 2018 (available at: <https://consult.defra.gov.uk/bovine-tb/badger-control-in-low-risk-area-england/>)

<sup>61</sup> In accordance with: Article 9(2), Bern Convention (available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680078aff> )

There is no evidence of biennial reports submitted by the Government as required in connection with exceptions made under Articles 7 and 8. These reports are mandatory on the basis that the badger population is jeopardised, threatened, and not monitored by the concerned authorities. Accordingly, there has been a failure to report on the controls in place concerning the exploitation of badgers.<sup>62</sup>

**Recommended Next steps:**

**It is crucial that the Government move away from its failing badger culling policy and move towards alternatives that have a meaningful impact on controlling TB for farmers.** The policy should focus on bTB prevention in cattle to include; cattle biosecurity and biocontainment measures (including the risks from slurry spreading<sup>63</sup>); mandatory risk based cattle trading; and improved cattle testing; with vaccination of cattle and badgers being considered as additional interventions.

We can expand on this Report on request.

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<sup>62</sup> In accordance with: Article 9(2), Bern Convention (available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680078aff> )

<sup>63</sup> As raised in the Godfray Review, ANNEX 2

