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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

40th meeting
Strasbourg, 1-4 December 2020

Other complaints

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

- REPORT OF THE GOVERNMENT -

*Document prepared by
the Department for Environment, Food & Rural Affairs, United Kingdom*



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Date: 28/04/2020

Dear Mr Hory

Complaint 2019/04 on the badger (*Meles meles*) culling policy in England

1. I refer to your request of 15 January 2020 for a response from the United Kingdom to the formal complaint, from July 2019, by the Born Free Foundation UK, the Badger Trust UK, and Eurogroup For Animals, Brussels, about the policy enabling licensed culling of badgers in England to prevent the spread of bovine tuberculosis (TB). I am pleased to provide the following information.

Summary

2. Authorities in England take seriously their responsibilities to protect wild fauna, including the European Badger (*Meles meles*), listed in Appendix III to the Convention on the Conservation of European Wildlife and Natural Habitats ("the Convention"). For many years we have had legislative protections in place for badgers and their setts. However, we also have to deal with bovine TB, one of the most difficult and intractable animal health challenges that England faces.
3. We have a comprehensive 25-year Strategy¹ to eradicate bovine TB by 2038, which includes the use of Badger Disease Control Licences for badger culling in areas of England where badgers are an important factor in spreading the disease to cattle. Our approach meets our obligations under the Convention and includes the use of exceptions where necessary, and reporting. The licensing authority, Natural England, closely monitors the badger culls to ensure that these will not be detrimental to the survival of the badger population concerned and publishes an annual summary of culling operations.

Background - Bovine TB Strategy for England

4. Bovine TB is one of the greatest animal health threats to the UK. Over 31,000 cattle were compulsorily slaughtered in England to control the disease in the 12 months to December 2019. Costs to Government, including compensation for farmers, exceeds £100 million a year and costs to the farming industry are estimated to be around £50 million a year. We are therefore continuing to take strong action to eradicate the disease to protect the future of our dairy and beef industries. In addition to badger culling, our Strategy (published in 2014) includes tighter cattle movement controls, more cattle testing and badger vaccination.

¹ <https://www.gov.uk/government/publications/a-strategy-for-achieving-officially-bovine-tuberculosis-free-status-for-england>

5. The badger culling policy in England (since 2011) requires the removal of at least 70% of the badger population in licensed cull areas, where badgers are an important factor in spreading TB to cattle, irrespective of their disease status, in order to reduce the levels of the disease in cattle. The Randomised Badger Culling Trial (RBCT - see Annex 7 to the complainants' report) provides the scientific evidence that proactive, wide-scale, sustained badger removal in areas with a high incidence of TB in cattle has a net beneficial effect in terms of reducing the level of TB in cattle relative to similar areas where badgers are not removed. A recently-published independent epidemiological study into the effectiveness of badger culling (by Downs *et al.* in 2019²) found a significant reduction in TB incidence rates in the first two cull areas in England over four years, relative to comparison areas where no culling had taken place.
6. A map of the areas licensed for badger culling can be found online³. This map identifies the High Risk TB Area of England, the Edge Area (the buffer zone between the High Risk and the Low Risk TB Area) and the Low Risk TB Area (where there is a low incidence of bovine TB and, apart from occasional discrete hotspots, no recognised significant reservoir of the disease in wildlife).
7. We keep our Strategy under review and continue to enhance our TB control measures as we respond to changing disease circumstances. For example, we launched subsidised badger vaccination schemes in 2015 and 2018, mandatory post-movement testing for cattle entering the Low Risk Area from herds in other parts of England and Wales in April 2016, and in 2018 introduced more frequent cattle surveillance testing in parts of the Edge Area.
8. On 5 March 2020, the Government published⁴ its response to the independent Bovine TB Strategy Review (see Annex 2 to the complainants' report), was led by eminent population biologist Professor Sir Charles Godfray. Our response sets out our plans for the next steps in our Strategy to eradicate bovine TB, including field trials of a cattle vaccine, plans to evolve badger control policy so that we can retain the disease benefits gained so far and maintain progress whilst shifting more towards vaccination, and improved cattle testing to intercept bovine TB earlier.

Badger culling - alleged breaches of Articles 7 and 9

9. The complainants raise a number of grounds alleging that the UK is in breach of its obligations under Articles 7 and 9 of the Convention.
10. Article 7 of the Convention provides that: '*1. Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III.2. Any exploitation of wild fauna specified in Appendix III shall be regulated in order to keep the populations out of danger, taking into account the requirements of Article 2....*'
11. These obligations are met in Great Britain through the Protection of Badgers Act 1992 ("the Act") which regulates the exploitation of badgers by prohibiting the actual or attempted killing, injuring or taking of badgers, and by protecting their setts. Breach of these prohibitions in the Act is a criminal offence punishable by up to 6 months imprisonment and/or an unlimited fine.
12. Article 9(1) of the Convention provides for Contracting Parties to: '*...make exceptions from the provisions of Articles 4, 5, 6, 7 and from the prohibition of the use of the means mentioned in Article 8 provided that there is no other satisfactory solution and that the exception will not be detrimental to the survival of the population concerned*'. Exceptions can be made: '*to prevent serious damage to crops, livestock, forests, fisheries, water and other forms of property*' [*emphasis added*].

² <https://www.nature.com/articles/s41598-019-49957-6>

³ <https://tbhub.co.uk/preventing-tb-breakdowns/bovine-tb-risk-map/>

⁴ <https://www.gov.uk/government/publications/a-strategy-for-achieving-bovine-tuberculosis-free-status-for-england-2018-review-government-response>

13. Under the Act, a licence may be granted to a person to derogate from the prohibitions on killing, injuring and taking badgers for specific purposes set out in the Act, subject to compliance with any conditions specified in the licence. One of the listed purposes for which such a derogation may be granted is 'preventing the spread of disease'.
14. In England, Badger Disease Control Licences are granted by Natural England to prevent the spread of disease (bovine TB) to livestock in areas where badgers are an important factor in that spread. The aim of preventing the spread of bovine TB in this way is to prevent the serious damage to livestock that the disease causes.
15. There is broad scientific consensus that badgers are implicated in the spread of TB to cattle. Professor Sir Charles Godfray's independent review of the science published in 2013, which brought together leading UK experts, concluded that TB spreads within and between populations of badgers and cattle and that spread from badgers to cattle is an important cause of herd breakdowns in high-incidence areas. This is distinct from his later review of our TB Strategy in 2018, referred to above, in which he advised that stopping culling without introducing other measures would mean that an important source of transmission to cattle would not be addressed, and that more stringent intervention would be required to achieve a comparable reduction in TB in cattle, which would negatively affect industry. Recent evidence from Crispell *et al.* (2019) suggests that transmission occurs more frequently from badgers to cattle than vice versa, that within-species transmission occurs at higher rates than between-species transmission for both, and that control operations should target both cattle and badgers.⁵
16. We know from the RBCT that the prevalence rate of the disease in badgers in the High Risk TB Area of England is around 30% based on post-mortem examination and culturing. In the current culls, infected badgers were found in every cull area where testing has been carried out.
17. As set out in paragraph 4, Bovine TB causes serious damage to livestock. Animals which test positive for the disease are compulsorily slaughtered (over 30,000 cattle annually) to prevent the spread of the disease and protect human health. Our cattle breeders suffer the loss of prize-winning animals and valued herds and this loss has a significant economic impact on the farming industry. Moreover, there are direct welfare impacts on cattle which contract the disease due to fever, loss of appetite and weight loss. They may also suffer from chronic mastitis (an infection of the udder that is not cured by conventional antibiotic therapy)⁶.
18. The complainants allege that: '*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*' (Ground 7). We disagree. As outlined above, due to the serious negative impacts bovine TB has on cattle, the exploitation of badgers through regulated culling is carried out to *prevent serious damage to livestock* resulting from bovine TB, in accordance with Article 9 of the Convention.

Not detrimental to the survival of the population concerned

19. Under Article 9, exceptions can be made to Article 7 provided they will '*not be detrimental to the survival of the population concerned*'.
20. The complainants assert that UK measures jeopardise the population concerned (Ground 1), that the UK does not monitor exploitation (Ground 2), and that policy is not based on current population data (Ground 6).

⁵ <https://doi.org/10.7554/eLife.45833>

⁶ <https://www.gov.uk/guidance/bovine-tb>

21. The UK Government's Guidance to Natural England⁷ sets out the stringent criteria for applications for Badger Disease Control Licences. These include, for intensive cull licences, that:

'Natural England should aim to ensure that culling will "not be detrimental to the survival of the population concerned" within the meaning of Article 9 of the Convention on the Conservation of European Wildlife and Natural Habitats, and for this purpose in considering applications for a licence should have regard to the guidance of the Standing Committee on the interpretation of Article 9 of that Convention. For that purpose Natural England should:

- a. determine appropriate area-specific licence conditions; and*
- b. set a maximum number of badgers to be removed from the licence area.'*

22. In order to ensure that disease control aims are met without jeopardising badger populations, the Government also publishes annual advice to Natural England on setting and reviewing the minimum and maximum number of badgers to be removed in each licensed cull area⁸. The advice notes that culling 'needs to "not be detrimental to the survival of the population concerned" within the meaning of Article 9 of the Bern Convention on the Conservation of European Wildlife and Natural Habitats'.

23. The estimated badger populations are based on previous baselines, accumulated evidence and annual sett surveys by each licensed cull company to understand the geographic distribution of badger activity in their area.

24. Natural England (as licensing authority) and Defra (as the responsible Government Department) closely monitor the culls to assess progress and to ensure they will not be detrimental to the survival of the badger population concerned. Significant amounts of data from cull companies and their contractors are submitted, collected and analysed by Natural England throughout the course of the culls to accurately assess the level of effort being applied across cull areas and the numbers and locations of badgers removed. This data also allows Natural England to assess whether the estimated badger population for each licensed area is a reasonable reflection of the true population and whether the minimum and maximum numbers in some areas need to be adjusted during the operational period.

25. The latest published summary of Natural England's monitoring of badger culling operations (from 2018⁹) identifies that, as in previous years, the minimum and maximum numbers were updated in some areas as initial estimates of badger abundance were refined by actual circumstances observed in the field once badger culling operations were underway.

26. As the complainants identify: *'the UK has the largest viable badger population in Europe'*, estimated at 485,000 badgers across England and Wales [2011-2013]. This figure is taken from a Government-funded report by Judge *et al.*¹⁰ The report also stated that: *'Although direct comparison with previous estimates is not ideal owing to methodological differences, our results are consistent with a marked increase in the badger population of England and Wales since the 1980s [when the population was approximately 250,000].'* It also should be noted that, to date, only 16% of England has been subject to licensed culling of badgers under the current policy.¹¹

⁷ 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
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710537/tb-licensing-guidance-ne.pdf

⁸ <https://www.gov.uk/government/publications/advice-to-natural-england-on-setting-minimum-and-maximum-numbers-of-badgers-to-be-controlled-in-2019>

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765439/badger-control-monitoring-2018.pdf

¹⁰ <https://www.nature.com/articles/s41598-017-00378-3>

¹¹ The total land area of England is around 132,800 km², of which around 21,500 km² has so far been subject to badger culling.

27. Given the above, we do not accept the assertions made in Grounds 1, 2 and 6 of the complaint.

No Other Satisfactory Solution

28. Article 9 of the Convention permits exceptions to Article 7 where ‘*there is no other satisfactory solution*’.

29. While the cornerstone of our bovine TB eradication strategy is a policy of regular testing and removal of infected cattle from herds, we have also deployed biosecurity measures to try to break the cycle of infection between cattle and badgers, and badger control in areas where the disease is rife. Badger culling is a necessary part of our package of measures to tackle the disease.

30. The badger culling policy in England (since 2011) is that, in order to reduce levels of TB in cattle, at least 70% of the badger population needs to be removed in licensed areas, irrespective of their disease status. The RBCT provides the scientific evidence that proactive, wide-scale, sustained badger removal in areas with a high incidence of TB in cattle has a net beneficial effect in terms of reducing the level of TB in cattle relative to similar areas where badgers are not removed.

31. While there is no single answer to tackling bovine TB (which is why we deploy a range of policy interventions) the UK Chief Veterinary Officer has advised that proactive badger culling is the best available option to prevent badgers infecting cattle with TB in areas where the disease is widespread.

32. As the then Environment Secretary set out in his foreword to our 2014 TB Strategy: ‘*The Strategy will simply not work without addressing the reservoir of TB infection in badgers. The option of using injectable badger vaccine has been available since 2010. However, we estimate that a third of badgers in endemic areas are infected with TB; we know that the vaccine does not cure them and that they remain free to spread TB.*’

33. As we also set out in paragraph 7 of our reply to you of 28 March 2012, following your request of 19 January 2012 concerning the complaint from the Humane Society International (attached): ‘*having assessed the known and estimated effects of badger culling and vaccination, Defra veterinary and scientific advice is that culling in high cattle TB incidence areas, carried out in line with strict evidence-based licence criteria, will reduce the number of infected badgers and thus the weight of TB infection in badger populations in the control area more quickly than vaccination, and therefore have a greater and more immediate beneficial impact on the spread of TB to cattle and the incidence of infection in cattle.*’

34. Detailed analysis on the effect of culling in the first two cull areas over the first two years was published by Brunton *et al.* in 2017¹². This showed a ~58% reduction in the disease in cattle in the Gloucestershire badger control area and a ~21% reduction in Somerset after two years of badger control compared to un-culled areas.

35. A more recently-published independent epidemiological study into the effectiveness of badger culling (by Downs *et al.* in 2019¹³) showed a further decline in TB incidence in the first two cull areas. Specifically, it found a ~66% reduction in TB incidence rates in the Gloucestershire cull area and a ~37% reduction in TB incidence rates in the Somerset cull area over four years relative to comparison areas where no culling had taken place. No significant changes were observed in the third licensed cull area – Dorset – but this was after just two years of culling. Furthermore, the report found no evidence of an increase in the TB herd incidence rates in cattle herds located in the surrounding 2km buffer areas - the so-called perturbation effect

¹² <https://onlinelibrary.wiley.com/doi/full/10.1002/ece3.3254>

¹³ <https://www.nature.com/articles/s41598-019-49957-6>

36. To conclude, badgers are a reservoir of TB for cattle in large regions of the South West of England and the Midlands. There is also no example of a country that has successfully eradicated bovine TB without also addressing the presence of the disease in wildlife. Our policy is therefore in line with other jurisdictions. Ongoing independent analysis of our industry-led cull programme shows a positive effect in reducing cattle TB incidence. Our approach to tackling the disease is supported by the UK Chief Veterinary Officer and Defra's Chief Scientist.
37. We therefore disagree with the complainants' suggestion that the UK has failed to comply with the Article 9 provision on "no other satisfactory solution" (Ground 5). In order to bring bovine TB effectively under control in the UK and prevent serious damage to livestock, we consider that currently there is no other satisfactory solution to implementing a package of measures which includes badger culling.
38. While the badger cull has led to a significant reduction in bovine TB, as already noted, there is no single answer to tackling this disease. That is why our strategy sets out a comprehensive and adaptive, risk-based and staged approach informed by the best available evidence and scientific and veterinary advice that draws upon demonstrably successful approaches to address bovine TB from around the world.
39. The Environment Secretary's Statement¹⁴ of 5 March 2020 concerning the Government's response to the recent Bovine TB Strategy Review led by Professor Sir Charles Godfray, recognised that: "' He went on to say that: *The Government will ... begin an exit strategy from the intensive culling of badgers, while ensuring that wildlife control remains a tool that can be deployed where the epidemiological evidence supports it.*"
40. We therefore now intend to evolve our approach to preventing the spread of TB from badgers, gradually deploying badger vaccination to preserve the disease control benefits in areas which have completed a four-year 'intensive' cull but retaining the option of culling where the epidemiological evidence supports it.

Indirect impact on other species – Article 7

41. The complainants suggest that the UK is in breach of its obligations under Article 7 of the Convention as: *'The exploitation of badgers has a negative impact on other species that are protected by the Convention'* (Ground 3). However, there is no specific allegation or evidence that the UK has breached Article 7 or any other Convention obligation in this regard.

Reporting – Article 9(2)

42. Article 9(2) of the Convention requires Contracting Parties to report every two years to the Standing Committee on the exceptions made under Article 9(1). The UK has submitted biennial reports on the exceptions, including Badger Disease Control Licences which have been granted and the population impacts. There is, therefore, no basis for the complainants' claim that the UK: *'has failed to submit biennial reports to the Secretariat in connection with the exceptions'* (Ground 8).

Alleged breach of Article 8

43. The complainants allege that there is no effort to establish whether badgers targeted for culling carry bovine TB and therefore *"the exploitation of badgers is indiscriminate, and capable of causing local disappearance of the population"* (Ground 4).
44. The complainants' allegations are concerned with the merits of the overarching culling policy and whether the policy should only target infected badgers. There is nothing in Article 8 which requires

¹⁴ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-03-05/HCWS148/>

prior testing of badgers for TB before culling. Article 8 is concerned with means of capture and killing, including means which are indiscriminate or capable of causing local disappearance of populations of a species.

45. In our view, the matters raised by the complainants do not fall within the scope of the Convention and they have not set out any breach of Article 8.
46. Nonetheless, we provide background information on testing and our approach of only culling badgers where there is evidence of infection.
47. There is no reliable, cost-effective method of determining if a live badger is infected with bovine TB. The only way to test is by trapping and anaesthetising the badger. This method is very expensive and removing even a small number of badgers in this way could actually make disease worse through the phenomenon of perturbation¹⁵. Therefore, the only appropriate method is to test badgers who have been culled.
48. Post-mortem testing of badgers between 1998 and 2005 from road traffic accident surveys and the RBCT provided evidence of infection in around one-third of badgers in areas of high incidence of TB in cattle, where the majority of culling takes place. This has been confirmed by limited testing of badgers in the current cull areas where infection has been found in every area where badgers have been tested and the badgers have the same strain of *M.bovis* bacteria as local infected cattle. Culling is also exceptionally permitted in the Low Risk TB Area of England, where there is evidence that bovine TB is present in badgers and linked with infection in cattle herds. Thus we only cull badgers where there is evidence of infection.

Yours sincerely



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¹⁵ Perturbation refers to the increase in cattle TB incidence observed in the RBCT in areas where local ised culling took place and also in the 2km ring outside areas where wide-scale culling took place. This is thought to be as a result of changes in badger behaviour brought about by culling.