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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

40th meeting
Strasbourg, 1-4 December 2020

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Other complaints

Badger Culling Policy in England (United Kingdom)

- REPORT BY THE COMPLAINANT –

Document prepared by
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Additional materials 31st July 2020

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, and further to the additional materials provided on 12th March 2020, the complainants would like to draw attention to the following additional information and materials that have come to light.

Population viability concerns relating to the continued use of 'controlled shooting'

Natural England, acting on behalf of the UK Government, continues to issue badger culling and supplementary licences which permit both 'controlled shooting' (the targeting with rifles of free roaming badgers at night attracted to bait points), and trapping and shooting.

Controlled shooting was criticised by the Government's own Independent Expert Panel in 2014 for its lack of effectiveness and humaneness[1], and has been rejected by the British Veterinary Association because of animal welfare concerns[2]. However, its continued inclusion as one of the two permitted methods of culling under licence, based on the subjective opinions of DEFRA's Chief Veterinary and Scientific Officers, has resulted in more than 65,000 badgers (63.7%) being culled using this method since culling began in 2013, according to official data. The proportion of badgers being targeted by controlled shooting is rising, with more than 70% of the 35,000 badgers killed under licence in 2019 having been targeted by this method[3].

Meanwhile, the proportion of controlled shooting events that are monitored by Natural England observers has reduced markedly since culling began. In 2019, just 149 such events (0.6%) were monitored.[4]

In spite of reduced monitoring, the proportion of controlled shooting events which resulted in failure to retrieve the targeted badger, as reported by Government observers, has remained remarkably consistent, at around 10%. The fate of these badgers is unknown, although the finding from DEFRA's Independent Expert Panel in 2014 that, to be considered humane, controlled shooting should result in less than 5% of badgers taking more than 5 minutes to die, is clearly not being met, and the Panel's recommendation that *"If culling is continued in the pilot areas, or in the event of roll-out to additional areas, standards of effectiveness and humaneness must be improved. Continuation of monitoring, of both effectiveness and humaneness, is necessary to demonstrate that improvements have been achieved. In addition, such monitoring should be independently audited"*, remains unfulfilled.

The proportion of badgers that are shot at but not retrieved raises additional concerns that, if these badgers do subsequently die, maximum cull numbers set by Natural England, in order to prevent local populations from disappearing, may be exceeded. An informal analysis conducted by Professor Rosie Woodroffe, who was a member of the Independent Scientific Group on Cattle TB which oversaw the design and analysis of the Randomised Badger Culling Trial (RBCT), suggests that including not retrieved badgers in the cull data would result in five culls (of 107 for which data were available) exceeding their maximum targets and thus potentially breaking their licence conditions (these were the 2016 cull in Area 6-Devon, the 2017 cull in Area 17-Somerset, the 2018 cull in Area 3-Dorset, and the 2019 culls in Areas 4-Cornwall and 36-Staffordshire). Details of the analysis can be found in Annex A.

These analyses provide further evidence to show that the measures undertaken by the Government for the exploitation of badgers jeopardises the population concerned, and is capable of causing local disappearance of the population, placing the UK Government in breach of Articles 7 and 8 of the Convention.

Issuing of 'supplementary licences'

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300382/independent-expert-panel-report.pdf
[2] https://veterinaryrecord.bmj.com/content/176/17/423
[3] https://www.gov.uk/government/publications/bovine-tb-summary-of-badger-control-monitoring-during-2019/summary-of-2019-badger-control-operations
[4] https://www.gov.uk/government/publications/bovine-tb-summary-of-badger-control-monitoring-during-2019

In its document entitled *"Next steps for the strategy for achieving bovine tuberculosis free status for England"* published in March 2020[5], the UK Government indicated its intention to introduce 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, 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 recognised that badgers are an iconic species, that culling cannot go on forever, and for the need to identify an exit policy from badger culling and its gradual replacement by government-supported badger vaccination and surveillance. In particular, the document outlined the intention to replace 'supplementary culling' following the initial four-year licenced culling period, with badger vaccination. At the time we were broadly encouraged by this document. We also note that the Welsh Government recently announced the intention to initiate cattle vaccine trials in England and Wales[6].

However, in spite of these apparently progressive proposals, on 15th May 2020 the Government published supplementary badger control licences for all seven cull zones which had completed four years of culling under their original licences in 2019 (areas 4-10 inclusive)[7]. As detailed in our original report submitted in July 2019, there is no scientific basis for supplementary culling, the need for which appears to be based solely on the subjective opinion of the Chief Veterinary Officer. In addition, the issuing of these licences represents a failure by the UK Government to initiate the process of replacing supplementary culling with badger vaccination.

The lack of implementation of and support for badger vaccination programmes as an alternative to culling further demonstrates that 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, thereby placing it in continued breach of Article 9 of the Convention.

Proposals to extend culling into the Edge area

In May 2020 the UK government's Department of Environment Food and Rural Affairs (DEFRA) launched a public consultation on proposals to manage the delivery of both badger vaccination and culling in bovine tuberculosis (bTB) Edge counties. However, there has been no meaningful or informed consultation to establish whether badger culling, in principle, should be extended across the Edge bTB Area, and we strongly contest the justifications proposed in the consultation document, on the following grounds:

-The prevalence of disease in the badger populations across the Edge counties has yet to be established. The results of the long awaited Badger Found Dead survey, conducted in 2016 by the universities of Surrey, Nottingham and Liverpool and covering Edge area counties, have yet to be published, and as yet no data has been released regarding the number of badgers analysed, over what area(s) the submissions arose, how many badgers were found to be infected with bTB, which strains of bTB they were infected with, what prevalence of disease was determined and how this was distributed across differing badger populations and areas.

-The impact of an increased intensity of bTB surveillance in cattle across the expanded Edge area since January 2018 has not been adequately accounted for when analysing the reasons why reported infection incidence and prevalence among cattle herds has increased in recent years. According to official UK government statistics[8], the number of cattle tests per annum in the Edge Area increased by 20% during 2018 and 2019, compared to 2017, while the number of herds declined from 9,141 in 2017 to 8,872 in 2019. It is highly likely that it is this substantial increase in testing intensity that has led to a much greater detection of bTB cases, rather than transmission from badgers.

[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/870414/bovine-tb-strategy-review-government-response.pdf
[6] https://gov.wales/bovine-tb-vaccine-field-trials-major-breakthrough-long-term-plan-eradicate-disease-lesley-griffiths
[7] https://www.gov.uk/government/publications/bovine-tb-authorisation-for-supplementary-badger-control-in-2020
[8] https://www.gov.uk/government/publications/bovine-tb-epidemiology-reports-2018

-DEFRA continues to rely heavily on a publication by Downs et al. (2019)[9] in its justification for the continuing culling of badgers, but refuses to release the raw data and statistical methodology used in that analysis so it can be independently scrutinised as per good scientific practice. The authors of the Downs paper also cautioned: '*"...given the observational nature of the study we cannot exclude entirely biases in our results due to for example, unknown or unmeasured confounding. We recommend that evaluation of the effects from culling continues."* DEFRA has also failed to produce evidence for a substantive and consistent reduction in the incidence and/or prevalence of bovine TB among cattle herds in badger cull zones; an independent analysis of data from the first three licenced badger cull zones published in 2019 revealed no clear evidence for substantive or consistent reductions in cattle herd incidence and prevalence[10].

Further details, including links to relevant reference documents, can be found in the letter from the Animal Welfare Group to the Secretary of State at DEFRA dated 15th July 2020, provided as Annex B.

These issues provide further evidence that the UK Government has failed to demonstrate that the measures undertaken involving the exploitation of badgers is in place to prevent serious damage to livestock, and therefore continues to be in breach of Article 9 of the Convention.

Biosecurity breaches and poor on-farm practices

In May 2020, we were alerted to an independent analysis by a member of the UK-based ethical investigative agency Ecostorm, of data obtained from DEFRA, the Animal and Plant Health Agency (APHA), the Rural Payments Agency (RPA), Natural England, and the Scottish and Welsh Governments, spanning the period 2012-2019, and quantifying poor practices and regulatory breaches on livestock farms. The key findings included:

● *Strict rules relating to the movement of livestock, ear-tagging, cattle passports, registering of livestock deaths or keeping on-farm records have been breached thousands of times in recent years – hampering or making it almost impossible to trace disease outbreaks;*

● *Thousands of TB cattle tests were found to be late over a three-year period, risking the spread of the disease as infected livestock can go undetected;*

● *Dozens of inspections of Approved Finishing Units (AFU) - specialist facilities where cattle from infected herds can be housed before slaughter – found biosecurity rules and other regulations being breached. AFUs are supposed to be strictly biosecure. Some units had to be closed down because violations were so serious;*

● *Farms situated in some English badger cull zones were regularly found to be adopting practices that contradict good biosecurity guidelines for combating bTB.*

Figures collated and released under FOI legislation by the Rural Payments Agency (RPA), which administers farm subsidy payments and carries out inspections to ensure those in receipt of subsidies are adhering to agricultural "Cross Compliance" standards, demonstrated that in England between 2012 and 2018, some 6,028 non-compliances (breaches) relating to rules governing the appropriate identification and registration - including movements - of cattle were documented by inspectors. RPA figures for 2017 indicate that 50% of selected inspections relating to cattle identification and registration - including movements - in that year failed. More than 22,000 cattle were involved in the non-compliances. Irregularities in relation to the movement of livestock, cattle identification and related issues heighten the risk of infected livestock spreading the disease, and compromise traceability in the event of new outbreaks.

In addition, figures compiled by the RPA and its counterparts in Scotland and Wales reveal that between 2014 and 2016, more than 3,400 bTB tests were late. Late bTB testing increases the risk of disease spread; if infected livestock go undetected further animals - including from neighbouring herds – risk becoming infected.

[9] https://www.nature.com/articles/s41598-019-49957-6
[10] https://veterinaryrecord.bmj.com/content/185/22/699

Official records also show that biosecurity and other regulatory breaches appear to be widespread at Approved Finishing Units, with problems identified during 143 inspections of AFUs in England and Wales since 2014. AFUs and similar units are supposed to operate to a high level of biosecurity owing to the disease risk; breaches of regulations at such facilities risk the spread of bTB into the cattle supply chain, undermine the effectiveness of the wider control strategy and reduce confidence in the robustness of industry compliance.

Previously unpublished records highlight a host of biosecurity deficiencies at some farms participating in badger culls – including practices that could exacerbate the spread of the disease. Inspection data released under FOI legislation reveals that of 133 inspections of cattle owners carried out by or on behalf of Natural England in 2016 in culling areas – including in Devon, Dorset, Herefordshire, Gloucestershire and Cornwall – significant numbers failed to take basic hygiene and disease management steps. Moreover, the vast majority of cattle owners participating in the 2016 badger culls appear to have never been inspected by Natural England – inspectors visited just 10% or less of cattle owners participating in individual culls in order to assess biosecurity standards. Good biosecurity is seen as a key pillar in the strategy for combating bTB on livestock farms. Where badger culling has been approved, participating farms are supposed to ensure that biosecurity standards are in place which offer a strong protection against disease spread. Where poor biosecurity practices are occurring in badger cull zones, the case for culling is brought into question. Additionally, the apparently low proportion of participating farms being inspected means Natural England are not capturing the full picture of biosecurity and other compliance issues.

These poor practices clearly undermine efforts to control the spread of bovine TB among and between cattle herds, and further undermine the case for badger culling. Moreover, biosecurity breaches within licenced badger culling areas potentially place participating farmers in breach of cull licence conditions, although no action appears to have been taken to suspend or revoke any cull licenses as a result.

Further details can be found in the report dated May 2020, provided as Annex C.

In failing to ensure best practice guidance and biosecurity protocols are strictly adhered to, 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, thereby placing it in continued breach of Article 9 of the Convention.

Veterinary Disease Report Forms

In its attempts to justify the continued culling of badgers under its current policy, DEFRA continues to rely heavily on information obtained from Veterinary Disease Report Forms and identification of Risk Pathways, which attribute a high proportion of cattle herd breakdowns to badgers. However, the validity and robustness of these reports has been called into question.

The Derbyshire Wildlife Trust commissioned an evaluation of the methodology by which likely sources of bovine TB for new outbreaks among cattle were being identified, following an APHA report which suggested that that 77% of new cases of bTB in cattle in Derbyshire in 2018 were caused by badgers[11]. The Trust's findings were published in a report dated March 2020 which is provided as Annex D. Its key conclusions are as follows:

1. The APHA report fails to provide an adequate explanation of the amount and weight of evidence necessary 'in the field' to categorise and rank risk pathways for TB transmission in relation to wildlife. The risk assessments used within the APHA report involve the investigating officers' judgements and opinions and therefore a degree of subjectivity is inherent in the methodology.

2. The APHA vet assigned to each outbreak assesses the risk of exposure to M.bovis infection from badgers to cattle based solely on the presence or absence of badger activity in the vicinity of a herd breakdown. The vets have no detailed disease data for the badger population and have to make a large and unsupported assumption that badgers are a source of disease on essentially any farms

[11] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/894433/apha-epid-report-edge-area-derbyshire.pdf

where they are present. Some of the vets may not have received appropriate training in badger ecology.

3. The APHA report fails to acknowledge the considerable volume of evidence pointing to the relatively poor sensitivity of the single intradermal comparative cervical test (SICCT) in cattle and the implications for this in attributing pathways of infection. The limitations of the SICCT test mean that a proportion of infected cattle are not disclosed and a failure to adequately consider these factors may have resulted in an underestimation of the potentially important role of residual infection and cattle movements in the risk assessments for 2018.

4. The APHA report claims that there are endemically infected badger populations, without citing scientific evidence to support the claim. Furthermore, the APHA report claims that Derbyshire has a higher than average population density of badgers, without any supporting scientific reference material. The report compares parts of the county with the epidemiology of the High Risk Areas (HRA), although low prevalence of M.bovis in the badger population combined with data indicating a comparatively lower density of badgers means the epidemiology of TB is not necessarily similar to the HRA and analogies cannot be simply drawn.

5. The partly subjective nature of the methodology and the uncertainties of assigning risk pathways, especially on the unlikely assumptions about TB in badgers, means that the 77% result is likely to be an overestimate.

While the Trust's report focusses on the situation in Derbyshire, the broad concerns it raises with respect to identification of risk pathways and attribution of likely sources of infection would equally apply to other geographic areas. The data emerging from the categorisation and ranking of risk pathways for bTB transmission have been widely promoted by proponents of badger culling as if they were robust and exact, and DEFRA/APHA has done little to emphasise the subjectivity of the data.

By continuing to rely on subjective Risk Pathway attribution, 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. As such, it continues to be in breach of Article 9 of the Convention.

Research on the feasibility of badger vaccination

A DEFRA-funded paper published in May 2020 by Benton *et al*., provided as Annex E, described a quantitative analysis of badger vaccination records, and the results of interviews and participant observation on a sample of vaccination project participants, in order to investigate (a) progress in the deployment of badger vaccination in England, (b) the trapping efficiency and coverage achieved by non-government groups, (c) motivations of participants involved in vaccination projects and (d) barriers to wider implementation. The authors concluded, *inter alia*, that by 2015 badger vaccination projects had spread to 17 English counties; that badger trapping efficiency was resulting in an average of 57% of the target badger population being vaccinated during an operation; that the motivations among individuals involved in badger vaccination include disease control, demonstration of an alternative to badger culling and personal or professional development; and that barriers to wider adoption of badger vaccination related primarily to a perceived lack of confidence among farmers and landowners in the effectiveness of badger vaccination for bTB control, but also to the limited availability of funding. The authors concluded that badger vaccination led by non-governmental groups is practically feasible; that it may achieve levels of coverage consistent with disease control benefits; and that wider uptake of badger vaccination across England might potentially be achieved by addressing the knowledge gap of the effect of badger vaccination on cattle TB, working closely with farmers and vets to better communicate the evidence base (in order to increase confidence in badger vaccination as a viable disease management approach), and by increased financial support for new initiatives and the scaling up of existing projects.

In spite of the suggestion in its March 2020 publication *"Next steps for the strategy for achieving bovine tuberculosis free status for England"* that it would seek to replace badger culling with vaccination, the UK Government's continued failure to adequately support badger vaccination programmes as an alternative to culling further demonstrate its failure to choose the most appropriate alternative, amongst possible alternatives, and its failure to be objective and

verifiable in its reasoning for this decision, thereby continuing to place it in breach of Article 9 of the Convention.

Additional scientific evidence

In July 2020, Miguel *et al*. published a paper in the scientific journal Nature entitled *"A systemic approach to assess the potential and risks of wildlife culling for infectious disease control"*[12]. The paper provided an assessment of the potential of wildlife culling as an epidemiologically sound management tool, by examining the host ecology, pathogen characteristics, eco-sociological contexts, and field work constraints. It also discussed alternative solutions and made recommendations for the appropriate implementation of culling for disease control.

The authors concluded, *inter alia*, that culling can lead to counterintuitive and detrimental outcomes, for instance higher disease incidence in some areas, and that a decreased disease risk is far from being a guaranteed result with culling. They also emphasised the importance of maintaining the biodiversity and specific richness of the wild and domestic compartments, two key drivers of resilient socio-ecosystems. They provided a toolbox for disease management in wildlife populations, in which essential components for consideration include: determining the target species; assessing the population size; identifying the individuals to be culled; understanding spatial distribution and connectivity; understanding transmission dynamics; determining spatial-temporal scales; defining culling rate and periodicity; quantifying the necessary economic resources; exploring culling social acceptance; field feasibility; surveillance, diagnosis, and rapid detection; territoriality, behaviour modifications, social structure perturbations, and emigration; and compensatory reproduction, migration, and community species adaptation. It is our considered view that many of these identified components have not been sufficiently considered by the UK government, and that its badger culling strategy should be placed on hold and subjected to a comprehensive review as a matter of urgency, taking into account the findings and recommendations of Miguel *et al*. (2020), and the International Consensus Principles for Ethical Wildlife Control published by Dubois *et al*. (2017)[13].

Letter to the Secretary of State

In June 2020 the Badger Trust, supported by Born Free Foundation, International Fund for Animal Welfare, League Against Cruel Sports, Royal Society for the Prevention of Cruelty to Animals, and Wild Justice, sent an open letter[14] to the UK Secretary of State for Environment, Food and Rural Affairs, outlining many of the concerns expressed here, and asking for an urgent meeting to discuss these concerns. A copy of the letter has been provided as Annex F. At the time of submission the Secretary of State had not responded.

Ongoing UK legal challenges

The complainants note that at there are two legal challenges being mounted in the UK challenging aspects of the government's badger culling policy: one by Wild Justice challenging Natural England's failure to ensure that badgers are being killed humanely[15], one by ecologist Tom Langton challenging aspects of failed, incomplete or irrational consideration in Defra's 'Next Steps' policy guidance from March[16]. While the detailed grounds for these challenges, and the associated evidence in support of those grounds, was not available at the time of submission, the complainants urge Bern Convention Bureau members and the wider Standing Committee to consider these grounds as they become available, in the context of the UK government's commitments under the Convention.

Please see the Report and appendices submitted with the original complaint in July 2019, and the Additional Materials submitted in March 2020, for further details on the grounds for complaint.

[12] https://www.nature.com/articles/s42003-020-1032-z
[13] https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/cobi.12896
[14] https://www.brockbase.com/post/badger-trust-believes-government-betraying-public-trust-on-bovine-tb-policy
[15] https://wildjustice.org.uk/general/press-release-from-leigh-day/
[16] https://thebadgercrowd.org/blog

Annex A: How many badgers do culls really kill? Prof Rosie Woodroffe
Annex B: Bovine TB: Expansion of badger culling across the Edge counties in England. Animal Welfare Group
Annex C: How poor biosecurity on farms could be exacerbating the spread of bovine TB - and undermining the case for badger culling. Ecostorm
Annex D: Critical evaluation of the Animal and Plant Health Agency report: 'Year End Descriptive Epidemiology Report: Bovine TB Epidemic in the England Edge Area – Derbyshire 2018'. Derbyshire Wildlife Trust
Annex E: Benton et al. 2020. Badger vaccination in England: Progress, operational effectiveness and participant motivations
Annex F: Bovine TB policy and badgers. Badger Trust and others