

# Fact Sheet 6:

# Legal Considerations



## INTRODUCTION

This factsheet is not intended to cover legislation relating to crime and criminal acts. The purpose of this factsheet is to provide information and guidance on how legislation impacts and relates to the important work that badger groups carry out regularly, such as rescue, release and rehabilitation.

## LEGISLATION

The badger is a protected species in the UK, with protection coming from several pieces of legislation; both species-specific and those also covering other mammals. Legislation includes general protections for badgers and wild mammals and also legislation related to capture, keeping, releasing and treatment. There is also legislation relating to public health that should be considered related to badger care and handling.

## RELEVANT LEGISLATION

The most relevant pieces of legislation, to badger groups and those involved in emergency badger care and rescue, are the following;

- The Protection of Badgers Act (PoBA) 1992,
- The Wildlife and Countryside Act (WCA) 1981 and;
- The Animal Welfare Act (AWA) 2006

However, all the acts listed below are also relevant and should be considered.

- Animal Health Act 1981
- Animal Welfare Act 2006
- Health and Safety at Work Act 1974
- Medicines Act 1968
- Protection of Animals (Anaesthetics) Acts 1954 and 1964
- Protection of Badgers Act 1992
- Public Health (Control of Diseases) Act 1984
- Public Health (Infectious Diseases) Act 1988
- Veterinary Medicines Regulations 2009 SI 2297
- Veterinary Surgeons Act 1966 (as amended 2002)
- Welfare of Animals in Transport Order 2006
- Wildlife and Countryside Act 1981 (as amended)
- Zoo Licensing Act 1982 (as amended 2002)



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## RESCUE AND CAPTURE

### TAKING

Badger rescue necessarily requires the 'taking' and transport of badgers for treatment. Under the Protection of Badgers Act (PoBA) badgers can be taken from the wild for treatment (with the intention of eventual release) under Section 9 (b) where:

*(b) it has been disabled otherwise than by his unlawful act and taken by him solely for the purpose of tending it and releasing it when no longer disabled and it is necessary for that purpose for it to remain in his possession or under his control, as the case may be.*

Where a badger has been incapacitated, for example, due to a road traffic collision and capture is relatively straightforward, this act provides clear protection and legal framework. The same can be said of very young badgers or any other collapsed or easily captured animals.

Where a badger shows signs of injury but is not easy to catch, the legislation becomes less clear. The exemption from the PoBA remains, however, badgers are also protected under Schedule 6 of the Wildlife and Countryside Act (WCA). This act limits the methods of 'taking or killing' of the species which could theoretically limit or prevent the use of traps to capture injured badgers, except under licence from Natural England (NE). An animal showing signs of injury should be monitored wherever possible to determine the severity of disease or injury and or improvements/worsening of the condition.

### TREATMENT

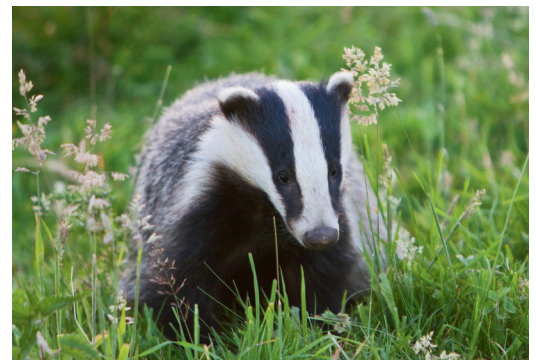
Fact Sheet 7 - Badger Emergency Care provides information on the legislation governing the provision of emergency veterinary care. It should be noted that a layperson is NOT legally permitted to provide treatment unless this is prescribed and directed by a veterinary surgeon.

### TRESSPASS

Entering property or land without the landowner's consent is trespassing. Volunteers should always have the consent of the property owner (except when on a public road or highway) before entering land or property to perform a rescue. Trespass is not usually a criminal offence, but it is common law (law that has come about through court judgements). Therefore a landowner can sue anyone (or potentially an organisation) entering their land without permission.

Trespass can become a criminal offence in the following circumstances:

- Entering railway property - Trespassers can be taken to court and fined up to £1,000.
- Entering protected sites (e.g. Stonehenge).
- Entering school property and causing a nuisance.



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## TRANSPORTATION

Once a badger is 'under the control' of an individual i.e. in captivity and during capture and transportation, it falls under the Animal Welfare Act (AWA) 2006 and the Welfare of Animals (Transport) Order 2006. Transporting a badger in England to and from veterinary care is covered by an exemption under the Welfare of Animals (Transport) Order 2006. However, other transportation, i.e. when taking a badger for release or to a rehabilitation centre may fall under the regulations of the act.

Badgers must be able to stand naturally, lie down and turn around within the cage used for transportation. There must be suitable ventilation at all times. Two people should be involved in the transportation of badgers and the animal should never be left unattended in a vehicle. Whenever transporting badgers, the general principles of the Order should be followed. For more detailed guidance consult the full Badger Rehabilitation Protocol and Fact Sheet 2: Capture, Handling, Transport & Release.



**Facilities: If new facilities are to be built, ensure that you consult with the local planning department to ensure that you are compliant before finalising any design and building.**

*Image: Cub in rehabilitation © Cuan Wildlife Rescue*

## REHABILITATION AND TREATMENT

Under the Animal Welfare Act, it is a requirement to provide adequate veterinary care to animals in order to protect them from pain, suffering, injury and disease. Any badger coming into captivity should be checked by a veterinary surgeon (See References for more information).

Under the WCA 1981, and the PoBA, badgers can be kept in captivity for treatment until well enough to be released. An animal needs to be kept in accordance with the AWA and its '5 needs' met at all times. If they cannot be released because they would not survive, both acts make provision for euthanasia.

The rehabilitator should not mark a badger, even temporarily to aid in follow-up after release, unless they are in possession of the correct licence (PoBA) from Natural England or the appropriate devolved authority. This also follows for rehabilitators who carry out Long Term Rehabilitation (LTR) for badger cubs, since they need to be microchipped and, bTB tested (See Fact Sheet 4: Testing badgers for Bovine TB and Fact Sheet 5: Badger Cubs).



*Image: Cub at vets © Northants Badger Group*

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## NOTIFIABLE DISEASES

Notifiable' diseases are animal diseases that you're legally obliged to report to the Animal and Plant Health Agency (APHA), even if you only suspect that an animal may be affected. Notifiable diseases in the UK include things like bovine TB and Avian influenza.

Under the Animal Health Act, *'any person having in their possession or under their charge an animal affected or suspected of having one of these diseases must, with all practicable speed, notify that fact to a police constable'*. Notification should be made to APHA, although it's likely this will be the responsibility of the veterinary practice or long-term rehabilitator. Guidance on health and safety for volunteers should always be provided in the form of risk assessment and procedure.



Image: Rescued badger © Northants Badger Group

## RELEASE

Adult badgers must always be released where found because they are familiar with the territory, places of shelter and foraging. It is an offence under the AWA to abandon an animal so that it fails to thrive, and releasing a badger outside known territory could cause this, especially given the strong likelihood of fighting with the local badger clan. In addition, translocating an adult badger could spread disease and there are of course additional legal ramifications.

In addition, the badger must be fully fit enough to survive in the wild. If you are in any doubt, ensure that your veterinarian is aware of Fact Sheet 7: Badger Emergency Care and consults the full Badger Rehabilitation Protocol for guidance.

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## HEALTH & SAFETY

The Health and Safety at Work etc. Act 1974 (HSWA) protects employees and others who may be affected by work activities. This includes those volunteering for, or on behalf of your organisation with employees. If you have no employees but do have volunteers carrying out activities for your organisation, then health and safety laws will not normally apply to you. However, you may still have duties under civil law.

Under the common law, voluntary organisations and individual volunteers have a duty of care to each other and others who may be affected by their activities. Where something goes wrong, individuals may, in some cases, sue for damages using the civil law if they are injured as a result of another person's negligence.

Therefore it is advisable that volunteers are provided with suitable protective equipment and instructions on when and how to use it, risk assessments and be covered by suitable insurance. For more guidance on suitable equipment see Fact Sheet 1: Starting a Rescue Service, Fact Sheet 2: Capture, Handling, Transport & Release and the full Badger Rehabilitation Protocol. Wherever possible, suitable training should be provided.

The Health and Safety Executive suggest following these steps for risk assessments:

- Look for the hazards.
- Decide who might be harmed and how.
- For each hazard, work out the chance of harm being done and decide whether the precautions are good enough.
- Record what the risk assessment finds, such as the main risks and what you have done to deal with them.
- Check your assessment regularly and change it if needed.



*Image: Badger in rehabilitation © Cuan Wildlife Rescue*

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## REFERENCES AND FURTHER READING

### Badger Rehabilitation Protocol

- <https://www.secretworld.org/wp-content/uploads/2018/04/Badger-Rehabilitation-Protocol-Final-Liz-07032018.pdf>

### Animal Welfare Act

- <https://www.gov.uk/guidance/animal-welfare>

### RCVS Guidance for Vets (and RVNs) to provide first aid and emergency care

- <https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/supporting-guidance/24-hour-emergency-first-aid-and-pain-relief/>

### RCVS view on ownership of wildlife:

- <https://www.rcvs.org.uk/news-and-views/features/standards-and-advice-update/>

### Notifiable Diseases:

- <https://www.gov.uk/government/collections/notifiable-diseases-in-animals>

### Health and Safety

- <https://www.ncvo.org.uk/help-and-guidance/involving-volunteers/volunteers-and-the-law/volunteering-and-health-and-safety/>
- <https://www.hse.gov.uk/voluntary/index.htm>

### Transporting an animal

- <https://www.gov.uk/guidance/animal-welfare-in-transport>



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