

15th April 2011

FOR IMMEDIATE RELEASE

BADGER TRUST RETURNS TO LAW OVER CULLING

Statement by the Chairman, David Williams

The Badger Trust, with the support of landowner members who are also part of Pembrokeshire Against the Cull, has sent a letter before action with a view to commencing legal proceedings in the High Court if the Welsh Assembly Government (WAG) refuses to revoke its Order to destroy badgers. The WAG proposes to kill badgers as part of its bovine tuberculosis (bTB) eradication programme.

In the Trust's formal letter before action to the WAG [1] it sets out why it considers that the High Court should strike down the Order made on March 9th 2011 by the Rural Affairs Minister, Elin Jones in the last weeks of the Assembly term. The summary appears below and the full letter is on the Trust's website (www.badgertrust.org.uk).

The last two years have seen a significant fall in the number of cattle slaughtered because of bTB. If badger destruction had been allowed two years ago by the last government [2] it would have been presumed that the reason was culling rather the range of effective cattle-based measures now in force. Fortunately, in 2010, the Court of Appeal struck down the last culling proposals so we had a chance to see reduction by cattle-focussed means take effect.

The number of cattle slaughtered has fallen during the last two years by 45 percent in Dyfed [3], which includes the intensive action area where badger destruction is proposed.

It is our duty to pursue all legal means to protect the badger. Yet again the Trust is challenging the legality of a decision [4] by the WAG. The members of Britain's Badger Groups and our generous and loyal supporters look to us to secure the welfare of the badger in line with our objectives as a charity acting in the public interest.

The Badger Trust is the only organisation solely focussed on protecting this species, which is threatened by misconceived culling plans which are likely to cause more harm than good in terms of bTB reduction.

NOTES

[1] This can be viewed at www.badgertrust.org.uk. For a hard copy, please write to Badger Trust, PO Box 708, East Grinstead, RH19 2WN or telephone 0845 828 7878.

[2] Hilary Benn, the then Secretary of State for Environment, Food and Rural Affairs ruled out killing badgers after the £50 million Randomised

Badger Culling Trial had found their destruction would make no meaningful contribution to the eradication of bTB and that strict cattle-focussed measures would be effective.

[3] Down 45 percent from 8,361 animals in 2008 to 4,634 last year in Dyfed, and by 36 percent in Wales as a whole from 12,043 to 7,690. Defra TB statistics at <http://www.defra.gov.uk/foodfarm/farmanimal/diseases/atoz/tb/stats/detailedstats.htm>

[4] Last year, the Court of Appeal later ruled the proposed cull to be unlawful on all three grounds Trust had raised. Welsh Ministers conceded the appeal that the Order had permitted culling in the whole of Wales (even in the many areas where TB is not a problem), which was not supported by evidence and was unlawful as a result. The court also ruled that ministers had acted unlawfully in misinterpreting section 21 of the Animal Health Act 1981 as giving them power to cull if they could achieve a potential reduction in TB which was merely more than trivial or insignificant. Ministers had also unlawfully failed to carry out a balancing exercise to weigh up the harm involved (i.e. killing over 2,000 badgers) against the potential benefit (which the ministers' own model predicted to be a reduction in the rate of cattle herd breakdowns of just 0.3% of farms annually).

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Summary from the Letter Before Action

We will argue that, the decision to make the Order, the Order and the confirmation of the Order were unlawful in that:

(1) The potential for vaccination rather than culling was rejected (leading to the conclusion that culling was “necessary” (in the sense of there being no reasonably practicable alternative) within the meaning of section 21 of the 1981 Act on the basis that the extent of its likely impact was not “proven” in “large scale field trials”, when there is no such legal requirement in the 1981 Act or elsewhere. That was thus a misdirection as to the statutory requirements and/or the taking into account of an immaterial consideration.

(2) Alternatively, if and insofar as such proof could lawfully be required to support conclusions about the extent of the likely impact of any particular approach to reducing bTB, then that was not a requirement which could be applied selectively (as the WAG did here, as above) so as to lead to the conclusion that culling (in combination with free shooting) as allowed for by the Order (but itself not having been the subject of large scale field trials) was similarly “necessary”. Indeed, apart from anything else, as above, the culling proposal here is not “proven”, such that the claimed distinction between the culling proposal (the effectiveness of which is

claimed to be “proven”) and vaccination (which is said not to be “proven”) is unsustainable.

(3) Similarly, the permitted free shooting could not properly be taken as “proven” (and thus included within the proposed cull) if the need for a proposal to be “proven” was a proper consideration, particularly when it came to questions of effectiveness (alone or in combination with trapping and shooting), potential for suffering of badgers, and safety for people and other animals, particularly if (as the RBCT outcomes would require) it was conducted to secure simultaneous culling across the whole IAA, as above.

(4) Allowing for free shooting was further unlawful in that the Order allows for it to be carried out without landowner consent (including where land owners specifically object) or even notification and on an open-ended basis, without justification for such culling let alone with such culling being no more than is necessary to achieve the aim intended (and thus proportionate) so as to make lawful (per the Human Rights Act 1998) the interference with rights to respect for private life, home and family under Article 8 and peaceful enjoyment of one’s property under Article 1, Protocol 1 ECHR.

(5) The imposition of widely-drawn criminal sanctions *forever* on landowners who object to these terms, or counsel others to object further emphasises the disproportionate nature of the interference with these fundamental rights.

ENDS