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**Subject: Press Release**

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## **BADGER TRUST SEEKS LEAVE TO APPEAL TO COURT OF APPEAL**

The Badger Trust has applied to the High Court for permission to appeal to the Court of Appeal against the rejection of its challenge to the legality of the Welsh Assembly Government's (WAG) decision to kill badgers as one of its measures intended to eradicate bovine tuberculosis (bTB) from Wales.

A court sitting in Swansea in March granted permission for a judicial review but refused to quash the Minister's decision.

The Chairman of the Badger Trust, David Williams, said: "This case has raised matters of much wider public importance – in both legal and non-legal terms. The judgment in the judicial review could be interpreted as giving a green light to the killing of all sorts of wildlife across England and Wales on the flimsiest of evidence of any benefit in the form of disease prevention. Worryingly, the judgment explicitly rejects the Trust's argument that before a cull can be lawful a balancing exercise needs to be carried out, which weighs up the harm posed to badgers (in this case) against the potential benefit in terms of disease reduction.

"As a registered charity we have a duty to work for the welfare of badgers for the public good. Consequently the Trust must do all it can to ensure that the legislation that is clearly intended to protect animals does so, and that any exceptions to prohibitions have to be rigorously tested."

The Trust's submissions have been received by the court and WAG and the Government's response is expected by Friday May 7th.

The Trust considers that at least two arguments made in the judicial review have wider public importance beyond this specific case.

Firstly, the court's interpretation of the words "eliminate or substantially reduce" in section 21 of the Animal Health Act, 1981 (AHA): the judge concluded that culling of wildlife was permitted under section 21 simply where there would be an impact on, in this case, bovine TB which was "more than minor or trivial". The Trust contends that this interpretation takes the section 21 power to an extreme position whereby the most vicious and widespread cull of wild animals could be authorised for a benefit in terms of disease which is minimal. The judgment could also be taken to mean that the Act could provide for orders permitting the culling of wildlife across England and Wales on the widest possible basis – clearly that is a profound result and a point of much wider public importance.

Secondly, the Trust challenges the rejection of its argument that section 21 must be considered against the background of a legislative presumption against the killing of wildlife, in this case badgers. The High Court held that section 21 does not require the Minister to consider whether the extent and impact of the destruction of wild animals in play is justified by the extent and nature of the benefit to disease which might be brought about. The Trust argues that the starting point is that the Protection of Badgers Act precisely makes the killing of badgers an offence [2], with section 21 of the AHA offering one way (individual licences being another) of departing from it. The Trust claims that there is a requirement to consider the balance of potential benefits in terms of disease prevention versus likely harm to badgers in exercising this discretion, particularly if the court's interpretation of "substantial" holds and the threshold for that discretion arising is simply where the killing (on whatever scale, small or vast) would bring a benefit in disease terms which is only just above the smallest level.

It is important to note that whilst in her statement to the Assembly on 13 January, the Minister confidently announced that the proposed cull would yield a 9% overall reduction in cattle TB two years after the last cull took place, in fact what emerged in evidence painted quite a different picture. In the Trust's judicial review, the Minister conceded that:

Bovine TB will increase dramatically on lands adjoining culled land;

The best case scenario of a 9% 'overall reduction' in bovine TB in reality only amounts to a 6% decline in the rate of increase over all cattle herd breakdowns;

Any benefits observed in the first years post-culling will dissipate as badger numbers increase;

The longer term prognosis (that is, 30 months post-cull), is that there is in fact no ongoing benefit from culling.

The Trust will now ask the Welsh Assembly to go back and conscientiously reconsider the decision to cull in light of these important new facts. In these tough economic times, it seems only fair to the tax payer that an expensive pilot cull which has been shown not to be cost effective should be reconsidered carefully. This is especially so given that the cheaper option of vaccination has now been licensed for use in the UK and the Minister says it is a viable alternative to culling.

## NOTES

[1] Section 21 of the Animal Health Act, 1981: Destruction of wildlife on infection other than rabies. (2) The Minister, if satisfied in the case of any area . . . (b) that destruction of wild members of that or those species in that area is necessary in order to eliminate, or substantially reduce the incidence of, that disease in animals of any kind in the area, may, subject to the following provisions of this section, by order provide for the destruction of wild members of that or those species in that area.

[2] The Protection of Badgers Act, 1992 (sections 1-5) created offences in relation to badgers arising from the taking, injuring or killing badgers, from cruelty to badgers, from interfering with badger setts, from the selling and possession of live badgers and from the marking of badgers. Section 6 provides a defence where the person is, among other things, "unavoidably killing or injuring a badger as an incidental result of a lawful action" or does so pursuant to a licence.

## Contact

Jack Reedy

01564 783129  
0775 173 1107

Badger Trust is the only charity solely dedicated to the conservation of badgers across Great Britain.

PO Box 708, EAST GRINSTEAD, RH19 2WN

Tel: 08458 287878 Fax: 02380 233896

E-mail [press@badgertrust.org.uk](mailto:press@badgertrust.org.uk)

[www.badgertrust.org.uk](http://www.badgertrust.org.uk)

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