

# Badgers

Learning from Events Week

1 – 7 June 2020

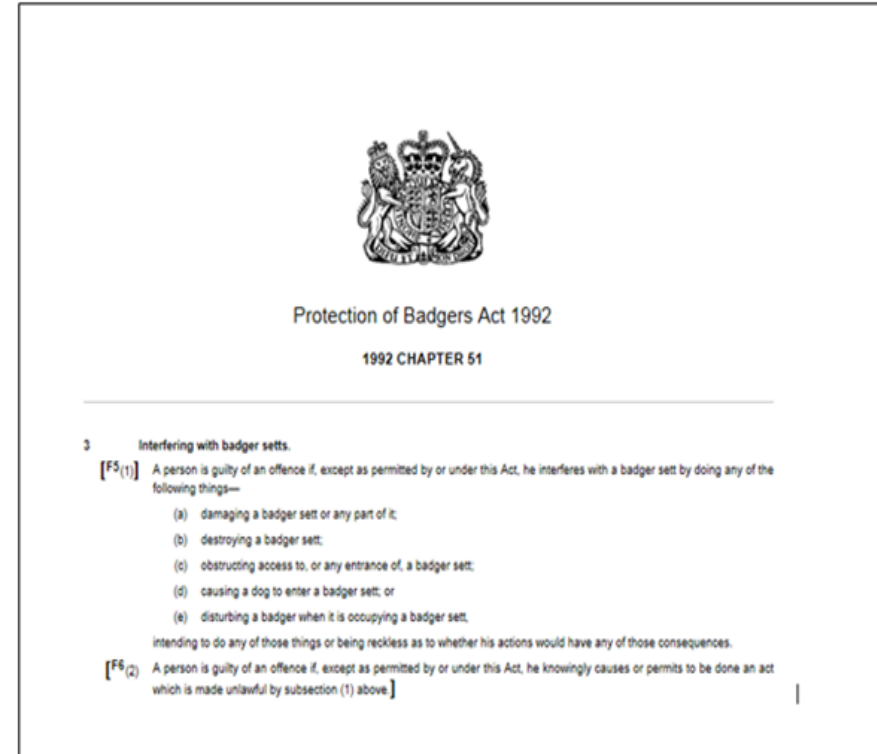


# Introduction

In 2018/2019 Scotland Route was involved in two major breaches of the Protection of Badgers Act 1992 which states that it is a serious offence to kill, injure or take a badger, or to damage or interfere with a sett unless a licence is obtained from a statutory authority:

- Blantyre Railway station: Disturbance of a badger sett: 26 July 2018
- Earnock Sidings, Hamilton: Disturbance of a badger's sett :05 to 08 March 2019

Both incidents resulted in a Level two Local investigation led by the Route's lead investigator with input from numerous teams across the business. One of the incidents resulted in police investigation.



Aims of today's presentation:

- To give attendees a better understanding of badgers and the protection they are granted
- To provide an overview of two incidents where Network Rail breached the legislation
- To present what lessons were learned and what changes were implemented
- To answer any questions and provide links to further information

# Badgers

- Badgers are a protected species
- Both the animal and their setts are protected by law
- It is illegal to carry out any construction work close to a badger sett without taking steps to positively avoid damage and without an appropriate licence
- There is no excuse in law to be unaware of the presence of badgers

## Identification

- Most badgers have the characteristic black and white striped face although very occasionally they can be creamy white (albino) or red/ginger in colour
- Fully grown adults can be up to 1m in length and weigh up to 14kg
- The sett entrance is usually D-shaped and is around 300 mm wide by 200 mm high. It is wider than either a fox or rabbit hole
- There may be signs of freshly excavated material at the entrance or piles of leaves, dry grass, straw or bracken



## The Law

The purpose of the Protection of Badgers Act 1992 is to protect the animals from deliberate cruelty and from the incidental effects of lawful activities which could cause them harm. Under this legislation it is an offence to:

- wilfully kill, injure, take, possess or cruelly ill-treat a badger, or attempt to do so
- interfere with a sett by damaging or destroying it
- obstruct access to, or any entrance of, a badger sett
- disturb a badger when it is occupying a sett

If any of the above resulted from a person being **reckless**, even if they had no intention of committing the offence, their action would still be considered an offence.

Penalties for offences under this legislation can be up to **six months in prison** and **a fine of up to £5,000** for each offence.

A badger sett is defined in the Act as '**any structure or place which displays signs indicating current use by a badger**'. This can include culverts, pipes and holes under sheds, piles of boulders, old mines and quarries etc.

'Current use' does not simply mean 'current occupation' and for licensing purposes it is defined as '**any sett within an occupied badger territory regardless of when it may have last been used**'. A sett therefore, in an occupied territory, is classified as in current use even if it is only used seasonally or occasionally by badgers, and is afforded the same protection in law.

# Blantyre Railway Station 26 July 2018

## Summary

- On Thursday 26 July 2018, 2 Artisans from Network Rail Building and Civils (Route Business Scotland) responded to a reactive fault for a “hole in the grass area “ next to a fence at the Platform of Blantyre Station
- This reported hole was actually a badger’s sett entrance.
- Once at the station the Artisans filled the badger’s sett entrance with concrete rubble and levelled of the entrance at the Platform
- The incident was witnessed by a member of Scottish Badgers



## Causes

- Failure to properly identify a badger's sett by Abellio ScotRail on initial reporting to OHPD helpdesk
- Artisans had not encountered a badger's sett before
- Lack of environmental awareness
- A dynamic risk assessment was not carried out on site
- The Hazard Directory was not included with the work instruction
- The work had no pre site environmental inspection carried out by the Supervisor from Network Rail
- Network Rail Property Maintenance - Work Instruction and Record Form had no environmental check within it and no Pre-Inspection Comment

## Risk

Network Rail as a consequence could potentially have been prosecuted under the badger's act 1992 and could have received an unlimited fine. This would have had significant effects on public reputation if published on social media or highlighted with the media.

Scottish badgers recognised this as systematic error rather than anything malicious by Network Rail and did not seek prosecution.

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## Actions Taken

- A site inspection of the badger's sett entrance was completed by Network Rail, Abellio ScotRail and Scottish Badgers and it was established that no harm or injury had come to the badgers
- The investigation team liaised with Scottish Badgers to ensure they knew Network Rail was treating the incident seriously
- All staff who are either based at the station or are responsible for, or carry out work there, were made aware of the sett and the restrictions on dealing with it.
- National Hazard Directory records are now issued with all Network Rail Property Maintenance Work Instruction and Record Forms, within Building and Civils Route Business Scotland.
- Network Rail Building and Civils have mandated in their Property Maintenance – Work Instruction Record form that completion photos and robust self-assurance checks are included for all works
- The Hazard Directory has been updated to have a specific record for badgers on the platform and adjacent area.
- Network Rail met with Scottish Badgers at Blantyre to look at the setts in the area to explore mitigation options for the platform works and to keep Scottish Badgers up to date with any ongoing planned work.

# Earnock Sidings, Hamilton 5th to 8th March 2019

## Summary

- Operatives from McCulloch Rail cleared vegetation in the siding on behalf of Vita Rail, in preparation for the Royal Scotsman carriages to be accommodated and maintained by Assenta Rail Limited, in E.G Steels yard
- After completion of the vegetation works Scottish Badgers viewed CCTV they had installed at Earnock Sidings, this monitored badger activity and found that parts of woodland which housed the badger's setts had work completed around it. Scottish Badgers alerted the British Transport Police (BTP).
- BTP carried out an investigation but no prosecution was sought as it was not possible to determine if the badger's sett was damaged or the badgers had come to any harm or injury. This was due to the large size of the sett, which had multiple entries/exits





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## Causes

- Lack of environmental awareness for all parties
- A dynamic risk assessment wasn't carried out on site
- The Hazard Directory extract in the Safe Work Pack did not hold information about the presence of a badger's sett or badgers at Earnock Sidings
- It was not clear who was responsible for the work i.e. roles and responsibilities were not documented or communicated to all parties involved
- There was difficulty in determining land ownership at Earnock Sidings
- Network Rail, could not complete the vegetation clearance due to a full work bank
- The sidings at Earnock had not been used operationally since 1993
- The work was planned within a short time frame, a one week turn around
- Chances to cancel the work were ignored
- The work was perceived as high priority and high prestige
- An ecological survey or general environmental assessment was not conducted
- The work request did not follow standard processes
- The Basic Asset Protection Agreement (BAPA) agreement designated the work as outside party works
- No further checks were made by Network Rail on the scope of the work or the environmental checks required due to works being classed as outside party works
- The works went ahead without full knowledge of who owned the land at Earnock Sidings
- Network Rail owned the land and Network Rail ASPRO should have treated the works as 3rd Party Works and had full environmental checks and surveys completed.

## Actions Taken

- A site inspection was completed by Network Rail and BTP to establish if harm or injury had come to the badgers. The results of this were inconclusive due to the badger's sett being very large.
- McCulloch Rail sought legal counsel from their lawyers after possible prosecution was put in place by BTP. McCulloch Rail gained legal privilege after the advise from their lawyers.
- Network Rail completed a Level 1 investigation into the incident to identify the immediate cause, underlying cause
- Network Rail, IMDM Motherwell implement changes in the Hazard Directory to reflect the location of the badger's sett at Earnock Sidings.
- Network Rail ASPRO team implemented steps for positive proof of land ownership from the Sponsor or Client department (Freight) before any works begin.
- Network Rail, Head of Asset Protection and Optimisation (ASPRO), Scotland will consider a full review of contractors used for any works. From this establish how contractors and ASPRO will comply with environmental standards and policies as identified within this report
- Network Rail, Head of Asset Protection and Optimisation (ASPRO), Scotland will establish the legitimacy and control of the document ASPRO-019 Appendix 10.03.17.

## Risk

Network Rail could have been prosecuted under the badger's act 1992 and could have received an unlimited fine. This would have had significant effects on public reputation if published on social media or highlighted with the media. Our reputation with Scottish Badgers is now fragile

## Summary

### Do

- Make sure all appropriate ecological checks have been carried out before work starts
- Check contractors have done the appropriate checks and have the correct paperwork in place
- Determine staff competencies
- IMMEDIATELY stop work and inform a line manager if a badger sett is found or a badger is seen on site or close to the site boundary
- Seek guidance from a competent person before any work within 30 m of a badger sett



### Do Not

- Use heavy machines within 30 m of a badger sett before checking with a line manager whether a licence is necessary
- Use light machines within 20 m of a badger sett before checking with a line manager whether a licence is necessary
- Work within 10 m of a badger sett before checking with a line manager whether a licence is necessary
- Carry out any works that are likely to disturb, damage or destroy a badger sett unless a line manager has categorically instructed to proceed further to a competent ecologists recommendation to do so

## Further information

### Staff

- Works Delivery Ecologists:  
James Morrison [james.morrison@networkrail.co.uk](mailto:james.morrison@networkrail.co.uk)  
Helen Simmons [helen.simmons@networkrail.co.uk](mailto:helen.simmons@networkrail.co.uk)
- Environment Specialist (Route)  
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- Environment Manager (Capital Delivery)  
Brian Beck [brian.beck@networkrail.co.uk](mailto:brian.beck@networkrail.co.uk)
- Local HSEAs
- Framework Ecologists

### Resources

- Safety Central  
<https://safety.networkrail.co.uk/home-2/environment-and-sustainable-development/environment/ecology-biodiversity/>
- Scottish Badgers  
<https://www.scottishbadgers.org.uk/>
- Nature Scotland (previously SNH)  
<https://www.nature.scot/professional-advice/safeguarding-protected-areas-and-species/protected-species/protected-species-z-guide/protected-species-badgers>



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for the future



**SCOTLAND'S RAILWAY**

BETTER IN THE MAKING

