

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Protection of Wildlife **Schedule 6**

Protection of Wildlife

Protection of Badgers Act 1992 (c.51)

420. **Paragraph 26** amends the Protection of Badgers Act 1992. The intention is to clarify certain aspects of the existing legislation; expand the degree of protection afforded to badgers and increase the penalties available in cases involving badger-baiting and other acts of cruelty. It also brings key aspects of the 1992 Act into line (in relation in particular to the enforcement powers available to the police) with the provisions of section 43 of the new Act and the amended section 19 of the 1981 Act. The principal effects of paragraph 26 are set out below.

- Paragraphs 26(2) and (8) make provision in relation to attempts to commit offences. A person who attempts to commit an offence under the 1992 Act is guilty of that offence and is liable to be proceeded against and to be punished accordingly. The principal provision is new section 11A, inserted into the 1992 Act by virtue of paragraph 8. The new section is closely modelled on existing section 18 of the 1981 Act.
- Minor changes have been made to section 3 and elsewhere with the intention of improving consistency with other wildlife legislation. Thus, in section 3, a provision is inserted to make it an offence to knowingly cause or permit an action which is unlawful. This reflects similar amendments being made via the new Act to the 1981 Act.
- The existing 1992 Act provides a number of defences to charges of taking or killing a badger. Changes have been made by paragraphs 26(4) to (6), which bring the terms of the 1992 Act closer to the comparable existing provisions in the 1981 Act. This is intended to aid enforcement and to limit the scope for abuse of the existing statutory defences.
- A specific power of arrest has been provided via paragraph 26(7). This means that the arrest powers available under the 1992 Act are the same as those available to the police in dealing with other wildlife crimes. The powers of entry and search available to the police, together with the safeguards governing the use of those powers, have also been brought into line with those in section 19 of the 1981 Act (as amended).
- Penalties under the 1992 Act have been upgraded by paragraph 26(9) to reflect what can be perceived to be the particularly abhorrent nature of badger digging

*These notes relate to the Nature Conservation (Scotland) Act
2004 (asp 6) which received Royal Assent on 11 June 2004*

and baiting offences. For those offences which are linked to activity of this type (including the related offences of causing a dog to enter a sett and selling a live badger) the option of prosecution on indictment has been provided. This brings with it a maximum 3 year jail term and/or an unlimited fine. Other penalties (e.g. for selling a live badger) have also been upgraded in relation to prosecutions under summary procedure and will now attract a potential 6 month sentence as well as a level 5 fine. This is consistent with the summary penalties available under the 1981 Act.

- The length of time available to the prosecutor for bringing a case is being increased for the majority of offences. This change is effected by paragraph 26(10). This will bring arrangements into line with both the new Act and the 1981 Act. The Fiscal must bring a prosecution within 6 months of the point at which sufficient evidence comes to his or her attention, subject to a maximum of 3 years from the date of commission of the offence. A provision clarifying the situation in cases of continuous contravention has also been provided.
- The liability of corporate bodies and their office holders under the 1992 Act has been clarified, also in paragraph 26(10) on a similar basis to elsewhere in the new Act.