

# ORGANISATIONAL LICENCE



Issued to: **HS2 Ltd**

## **Badgers – HS2, Phase 1 London to West Midlands**

### **OVERVIEW**

This organisational licence is issued to **HS2 Ltd** to permit disturbance, interference with and closure of badger (*Meles meles*) setts along the Phase One route: between London and the West Midlands.

HS2 Ltd ('the Licensee') is responsible for all activities performed under the authority of this licence.

Reference	WML-OR24
Organisational Licence	The following Annex is an integral part of this licence: <ul style="list-style-type: none"><li>• WML – OR24 Annex A</li></ul>
Issued under	The Protection of Badgers Act 1992 (the "1992 Act")

### **IMPORTANT**

This licence authorises acts that would otherwise be offences under the legislation referred to above.

Failure to comply with its terms and conditions:

- i. may be an offence against the Protection of Badgers Act 1992 or mean that the licence cannot be relied upon. The maximum penalty available for failing to comply with a condition of a licence under the 1992 Act is, at the time of the issue of this licence, an unlimited fine and/or a six month custodial sentence; and
- ii. may result in this licence being revoked and/or the refusal to grant future licences.

If the activity that you wish to undertake is not covered by this licence, or if you are unable to comply with any of the terms and conditions which apply to the use of this licence, then you will need to apply to Natural England for an individual licence.

This licence is not a consent or assent for the purposes of Part II of the Wildlife and Countryside Act 1981 (as amended) ("the 1981 Act") in respect to Sites of Special Scientific Interest. It is your responsibility to get consent or assent if required (see Information & Advice note n, below).

**Natural England** hereby authorises<sup>1</sup> anyone named on Annex B of this licence and employed by HS2 Ltd (hereafter referred to as the 'Licensee') or employed as a contractor working for HS2 Ltd

Address: 2 Snowhill, Queensway, Birmingham B4 6GA

under section 10(1)(d) of the 1992 Act.

To Carry out the activities detailed in Annex WML – OR24 Annex A

For the purpose of Any development as defined in section 55(1) of the Town and Country Planning Act 1990

Between (and inclusive) 1 May 2019 and 28 February 2021 (inclusive)

On land Within the consolidated construction boundary of the proposed rail route and land upon which the Licensee has the permission of the owner to operate, within the counties and unitary authorities of: Greater London, Hertfordshire, Buckinghamshire, Oxfordshire, Northamptonshire, Warwickshire, Staffordshire, Solihull and Birmingham. It may also be used on land in the aforementioned counties and unitary authorities where a third party or contractor of a third party owns or has permission to operate, to undertake works which are directly related to the construction of the rail route.

Subject to The Licence Conditions specified below and the terms and conditions in Annex WML-OR24(A).

#### Definitions used in this licence

Badger "sett"	Defined in the 1992 Act as " <i>any structure or place which displays signs indicating current use by a badger</i> ". See 'Information and Advice' a. below, for further guidance.
Appointed Person	An employee of the Licensee who is nominated to act as a single point of contact for Natural England with regard to this licence. The Appointed Person is expected to oversee use of the licence, including authorising contractors to act under the licence, training, record keeping, reporting and compliance.
Additional Authorised Person	An employee of the Licensee or employee of a contractor of the Licensee who is named in Annex B and who has received appropriate training and/or instruction and is competent to undertake activities permitted by the licence and who is authorised in writing to act under the licence.
Assistant	A person assisting an Additional Authorised Person. Assistants are only authorised to act under this licence whilst they are under the direct supervision of an Additional Authorised Person.

Terms and requirements of this licence that express conditionality are conditions of this licence whether so called or not.

The headings used in this licence and its Annex are for convenience only and shall have no effect upon the interpretation of this licence or its conditions.

<sup>1</sup> Natural England is authorised to exercise this power in accordance with an agreement made with the Secretary of State under section 78 of the Natural Environment and Rural Communities Act 2006

## LICENCE CONDITIONS

### Who may use this licence

1. The Licensee shall nominate an Appointed Person whose details will be provided to Natural England to oversee use of this licence.
2. The following persons (see Definitions) are authorised to use this licence whilst engaged in official business of the Licensee:
  - a. Additional Authorised Persons: employees and contractors of the Licensee who are authorised to use the licence by being named on the list of licensees at Annex B (see 3. below); or
  - b. Assistants acting under the direct supervision of an Additional Authorised Person.
3. The list of Additional Authorised Persons at Annex B will be held and maintained by HS2 Ltd, and will be made available to Natural England at reasonable notice during working hours.
4. Any Additional Authorised Person must be named on Annex B prior to undertaking any work under this licence.

### Working under the licence

5. Any person acting under this licence must abide by the conditions of WML-OR24(A), Annex A of this licence.
6. It is the responsibility of the Licensee to ensure that all persons using this licence possess appropriate knowledge and experience and /or instruction to undertake licensed activities in accordance with the terms and conditions of this licence and accepted best practice.
7. Anyone acting under the licence must abide by the most up to date iteration of HS2's Ecology Technical Standards (HS2-HS2-EV-STD-000-000017), and guidance referred to in this licence, including WML-OR24(A) Annex A.
8. Any Additional Authorised Person engaged in activity under the terms and conditions of this licence shall at all times carry a form of identification and authorisation and produce it on demand to any Police or Natural England officer (see Information and Advice note e).
9. The Licensee is responsible for **all** activities carried out under this licence, including activities carried out by Additional Authorised Persons and their Assistants.

### Recording and reporting requirements

10. It is a condition of this licence that the Licensee maintains:
  - a. the information required for each Annual Report to Natural England using report form WML-OR24(R);
  - b. a record of the names, and organisation / consultancy, of all persons authorised to use this licence, including Assistants; and
  - c. a record of all incidents where an activity has not been conducted in accordance with this licence and any remedial or corrective action taken.

Records are to be kept for at least two years after the licence expires and are to be made available for inspection by Natural England at any reasonable time.

11. An Annual Report of activities conducted under this licence must be sent by the Licensee to Natural England (at the address given below) for the reporting period 1 January (or date of issue, whichever is sooner) to 31 December (inclusive) no later than 31 January of each subsequent reporting year, even if the licence is not used (see Information and Advice note h).

### **Licence compliance**

12. Any person authorised by this licence shall permit an officer of Natural England, accompanied by such persons as he/she considers necessary for the purpose, on production of his/her identification on demand, reasonable access to work being undertaken for monitoring purposes and to be present during any operations carried out under the authority of this licence for the purpose of ascertaining whether the conditions of this licence are being, or have been, complied with. The additional authorised person(s) shall give all reasonable assistance to an officer of Natural England and any persons accompanying him/her.
13. Failure to comply with the terms and conditions of this licence (including the recording and reporting requirements) will, by default, render this licence null and void and it may not be relied upon until such time that Natural England confirms in writing that its use may resume.
14. Natural England must be informed of all breaches to this licence within 48 hours of it becoming apparent to the Licensee that a breach has occurred. Unless advised otherwise by Natural England, the licensed organisation must take the necessary steps to address any breaches or poor practice identified as quickly as possible.

Issued by and on behalf of Natural England on

**1 May 2019**

## INFORMATION AND ADVICE specific to this licence

### Badger setts

- a. The 1992 Act defines a badger sett as “*any structure or place which displays signs indicating current use by a badger*”. Examples of signs that may indicate ‘current use’ include entrances that are >25cm in diameter with a flattened oval appearance, entrances that are clear of debris and vegetation, entrances with smoothed sides (due to the passage of badgers), large spoil heaps (sometimes fresh) outside entrances, fresh bedding outside entrances, fresh badger footprints in spoil heaps, and well trampled runs leading to and from entrances. Further guidance (WMLG17) on interpretation of ‘current use’ of a badger sett is available at [http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/WMLG17\\_tcm6-11815.pdf](http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/WMLG17_tcm6-11815.pdf)
- b. Main setts usually have a large number of entrances with large spoil heaps, and look well used. They usually have well used paths to and from the sett and between sett entrances. Although normally the breeding sett, and in continual use all year round, it is possible to find a main sett that has become disused because of excessive disturbance or for some other reason.

### General Information

- c. The licence can be extended, terminated or revoked at any time by Natural England or the Secretary of State, but this will not be done unless there are good reasons for doing so.
- d. Any requests for information in a licence will be considered under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000 as appropriate.
- e. Additional Authorised Persons are advised to carry a copy of this licence at all times when acting under this licence.
- f. An individual licence will be required for any activities that are not covered by this licence. Contact [HS2wildlifelicencing@naturalengland.org.uk](mailto:HS2wildlifelicencing@naturalengland.org.uk) for further information

### Training and experience requirements

- g. It is the responsibility of the Licensee to ensure that each Additional Authorised Person has the appropriate level of expertise and experience to undertake the activities which they are permitted to undertake under this licence. It is also the Additional Authorised Person’s responsibility to ensure that Assistants have appropriate training, experience and instruction to act under this licence.

### Reporting

- h. The Report of action taken under licence (WML-OR24(R) must be completed annually (see Condition 10).
- i. Reports should be emailed to Natural England, but they may also be posted (please mark ‘Licence Returns’ send to the licensing email or postal address given below in ‘Contact Details’).

### Compliance and enforcement

- j. The Licensee is expected to monitor compliance with the licence and to take action in the event that poor practice and/or non-compliance are identified. A person may be barred from using this licence by Natural England, for example, if that person breaches the conditions of this licence. In these circumstances Natural England will notify the Licensee.
- h. Natural England will consider reporting any non-compliance, or concerns over standards, to the professional body of which a Consultant is a member.

## INFORMATION AND ADVICE for all Licences

### General Information

- i. The common name of the species given in licences and annexes to licences is included by way of guidance only; in the event of any dispute or proceedings, it is the scientific name of the species only that will be taken into account.
- j. No person convicted on or after 1 January 2010 of an offence under the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981, the Protection of Badgers Act 1992, the Deer Act 1991, the Hunting Act 2004, the Wild Mammals (Protection) Act 1996, the Animal Welfare Act 2006 or the Protection of Animals Act 1911 (all as amended) may use this licence without the permission of Natural England unless, in respect of that offence, either:
  - i. they are a rehabilitated person for the purposes of the Rehabilitation of Offenders Act 1974 and their conviction is treated as spent; or
  - ii. a court has made an order discharging them absolutely.Any request to use the licence by a person to whom this note applies will be considered on its merits.

### The limits of licences

- k. Licences permit action only for the purposes specified on that licence.
- l. Licences do not permit actions prohibited under any other legislation, nor do they confer any right of entry upon land.

- m. Unless otherwise stated the provisions of Natural England licences only apply landward of the mean low water mark in England. The Marine Management Organisation is responsible for all licensing seaward of the mean low water mark.

### Protected sites

- n. With the exception of WML-CL25 (*To permit the diversionary feeding of hen harrier (Circus cyaneus) on grouse moors in northern England*), a licence does not give permission from Natural England to carry out a licensed activity on a Site of Special Scientific Interest (SSSI). The notification documents for each SSSI contain a list of operations that require Natural England's prior consent. Owners and occupiers of land notified as SSSIs are required to give written notice to Natural England before either beginning any of these operations, or allowing someone else to carry out those operations. SSSI consent can only be given to a SSSI owner or occupier. It may be given with or without conditions, or in some cases, consent may not be granted. A similar process applies to public bodies and statutory undertakers (as defined under Section 28G of the Wildlife and Countryside Act 1981 (as amended)) and this obligation applies even where the operations are carried out on land outside of the SSSI.

Please note that as the licensee you will not be able to undertake the licensed activity on a SSSI until the owner or occupier of the SSSI has applied for, and received, Natural England's written SSSI consent. If you do so, you may be at risk of committing an offence. As the licensee, if you wish to exercise this licence on a SSSI you must contact the relevant owners or occupiers of the SSSI and ensure they give written notice to Natural England of their proposal to permit you to carry out licensed activity on their SSSI. You should wait until a SSSI consent decision has been received by the SSSI owner/occupier before you begin to exercise this licence on a SSSI. See [Gov.uk](http://www.gov.uk) for further information on how to get SSSI consent from Natural England.

In considering whether to issue consent or assent for activities likely to affect a SSSI that is a European Site, in other words a Special Protection Area (SPA) or Special Area of Conservation (SAC), Natural England will carry out a Habitats Regulations Assessment, as required by the 2017 Regulations to ensure there will be no adverse effects on the European Site.

To identify the location of SSSIs and European Sites, refer to the [Magic map system](#). You can search for and view details about all SSSIs by using Natural England's [Designated Sites system](#), including the citation and the list of operations requiring Natural England's consent for each site.

#### Contact details for Natural England

*For licensing enquiries (& Reporting):*

**Telephone** 020 802 61089

**Email** [HS2wildlifelicencing@naturalengland.org.uk](mailto:HS2wildlifelicencing@naturalengland.org.uk)

#### Postal address

Wildlife Licensing, Natural England, Horizon House, Deanery Road, Bristol BS1 5AH

*For other enquiries use the Enquiry Service:*

**Telephone** 0300 060 3900

**Email** [enquiries@naturalengland.org.uk](mailto:enquiries@naturalengland.org.uk)

**Web** [Natural England - GOV.UK](http://www.naturalengland.gov.uk)

#### Other useful contacts

**Local Record Centres:** to find out where your nearest Local Record Centre is visit the Association of Local Environmental Record Centres website at: <http://www.alerc.org.uk/find-an-lrc.html>

**Legislation:** to view the full text of the legislation referred to in this licence visit <http://www.legislation.gov.uk>

**Feedback and Complaints:** we welcome and value your compliments, complaints, suggestions and comments about our services. Please see our 'Contact us' section for more details.

<https://www.gov.uk/government/organisations/natural-england#org-contacts>



### **Who is collecting my data?**

The data controller is Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX. You can contact the Natural England Data Protection Manager at: Natural England, County Hall, Spetchley Road, Worcester, WR5 2NP; [foi@naturalengland.org.uk](mailto:foi@naturalengland.org.uk).

Any questions about how we are using your personal data and your associated rights should be sent to the above contact. The Data Protection Officer responsible for monitoring that Natural England is meeting the requirements of the legislation is: Defra group Data Protection Officer, Department for Environment, Food and Rural Affairs, SW Quarter, 2nd floor, Seacole Block, 2 Marsham Street, London SW1P 4DF. [DefraGroupDataProtectionOfficer@defra.gsi.gov.uk](mailto:DefraGroupDataProtectionOfficer@defra.gsi.gov.uk).

### **What of my data is being collected and how is it used? What is the legal basis for the processing?**

The information on the licence application form and any supporting material will be used by Natural England to undertake our licensing functions. This will include, but is not limited to assessing your application, issuing a licence if applicable, monitoring compliance with licence conditions and collating licence returns and reports. The personal information we will process will include, but is not limited to your name and contact details, customer type and reasons for wanting a licence.

Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. That task is to conduct the licensing functions as delegated by Defra to Natural England under Part 8 Agreement under section 78 of the Natural Environment and Rural Communities Act 2006

### **Who will my data be shared with?**

Your personal data may be shared by us with the Department for Food, Environment and Rural Affairs and its executive agencies including the Rural Payments Agency and the Environment Agency. This will be used to monitor and evaluate the effectiveness of our work.

It may also be shared with Police.

We will respect personal privacy, whilst complying with access to information requests to the extent necessary to enable Natural England to comply with its statutory obligations under the Environmental Information Regulations 2004, and the Freedom of Information Act 2000.

### **If you are relying on my consent to process my data, can I withdraw my consent?**

No, because the processing is not based on consent.

### **How long will my data be held for?**

Your personal data will be kept by us for 7 years after the expiry of your licence or longer if stated in the licence conditions.

### **What will happen if I don't provide the data?**

Failure to provide this information will mean that Natural England will not be able process your licence application.

### **Will my data be used for automated decision-making or profiling?**

The information you provide is not connected with individual decision making (making a decision solely by automated means without any human involvement) or profiling (automated processing of personal data to evaluate certain things about an individual).

### **Will my data be transferred outside of the EEA?**

The data you provide will not be transferred outside the European Economic Area.

### **What are my rights?**

A list of your rights under the General Data Protection Regulation, the Data Protection Act 2018, is accessible at:

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>

### **How do I complain?**

You have the right to lodge a complaint with the ICO (supervisory authority) at any time. Should you wish to exercise that right full details are available at: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>

**Natural England's Information Charter can be found here:** <https://www.gov.uk/government/organisations/natural-england/about/personal-information-charter>

# WML – OR24(A) Annex A

## HS2 Ltd

### Badgers – HS2, Phase 1

### London to West Midlands



Additional licence conditions for exclusion of badgers from their setts by means of one-way gates, and closure/destruction of setts

#### OVERVIEW

This annex to the licence permits persons authorised under this licence to disturb badgers (*Meles meles*) whilst occupying setts, interfere with badger setts, exclude badgers from setts and close and destroy badger setts located in the route of High Speed Two, Phase One: between London and the West Midlands.

The activities permitted by this licence:

To interfere with badger setts (see Information and Advice note a in main licence WML-OR24) by means of:

- a) Soft blocking of sett entrances
- b) Insertion of inspection equipment into a sett
- c) Use of vehicles, machinery and power tools in the vicinity of a badger sett
- d) Clearance of vegetation near a badger sett
- e) Installation of one-way badger gate(s) in sett entrances
- f) Obstructing access to setts using fencing installed with one-way gate(s)
- g) Closure and destruction of a badger sett

Subject to the Terms and Licence Conditions set out in the main licence and the Annex Licence Conditions below.

#### IMPORTANT

This licence is to be used only where licensed activities cannot be reasonably or practicably be avoided.

The conduct of the activities and operations listed in the table below are subject to the Additional Licence Conditions and to the terms and conditions contained in the main body of the licence.

## Additional Conditions

- A1 Any works undertaken using this licence shall comply with the requirements set out in the most up to date iteration of the HS2 Ecology Technical Standards HS2-HS2-EV-STD-000-000017 and detailed design developed for the site.
- A2 Work may only be undertaken at any location after the detailed design of mitigation has been approved by HS2 Ltd.
- A3 This licence can only be relied upon in situations where alternative measures that have a lower level of impact on badgers have been considered and proved to be either ineffective or impractical to implement.
- A4 The Licensee or Additional Authorised Person must ensure, before any works commence on site, that all those involved with the licensable works understand by way of an induction and instruction ('tool box talk'):
- that badgers may be present and the basics of the legislation;
  - the measures that will be used to avoid harm to badgers;
  - good working practices;
  - licensable activities;
  - what to do should a live badger be found.
- A5 A written record of persons inducted and instructed must be made and maintained and be made available to Natural England or any police officer on request within two working days of the request being made.
- A6 The Licensee or Additional Authorised Person is responsible for ensuring that all reasonable precautions are taken to ensure that unnecessary suffering or cruel ill treatment of any badger is avoided.

### **Use of machinery and vehicles near a sett and vegetation clearance around/over a sett (Conditions relevant to where the action will disturb badgers whilst occupying a sett, but where the sett will not be damaged/closed or destroyed)**

- A7 Prior to the start of operations, an area within a minimum distance of 10 metres (11 yards) of any known badger sett entrances that display signs indicating current use by a badger must be clearly marked using coloured tape, string, paint, or other markers. Any further setts which are discovered during the operation must be similarly marked as soon as their presence becomes known.
- A8 Within the marked area as above ('exclusion zone') no heavy machinery is to be used, no burning is to be carried out, no timber or brash piles are to be created and no stumps are to be removed. Fuel, oil, and chemicals must not be stored or applied within the marked area (the only exception is where conifer stumps must be treated against attack by the fungus *Heterobasidion annosum* (Fomes)).
- A9 Vehicles must not drive directly or park over badger sett entrances.
- A10 Trees/stumps/shrubs/hedges within 20 metres (22 yards) of the sett must not be uprooted.
- A11 Trees may be felled or vegetation cleared within the exclusion zone using hand-held tools and hand held machinery such as chainsaws or brushcutters.
- A12 Trees may also be felled using a purpose-built machine, where the boom and cutting head can safely reach into the exclusion zone, provided the body of the machine remains parked outside the exclusion zone.
- A13 Trees must be felled to fall away from, or be lifted away from, badger sett entrances.
- A14 Any badger sett entrances which become blocked must be unblocked and left unobstructed at the end of each day's work.

- A15 Timber or brash may be extracted or removed from inside the exclusion zone using a tractor and winch or a purpose-built machine, provided the body of these machines remains parked outside the exclusion zone.
- A16 Where works involve pile driving, rock boring, dynamic compaction or a similar activity with the potential to cause ground vibration that could disturb badgers occupying a sett or damage a sett by causing tunnel collapse, the impact on that sett must be evaluated prior to commencement (See Recommendations and Information notes h and i).
- A17 If disturbance is reasonably expected to result in a longer term impact (e.g. more than 4-6 weeks) on the badgers occupying that sett or cause tunnel collapse, in accordance with Licence conditions A23 - A31, badgers must be excluded from the sett and the sett closed and proofed against re-entry by badgers before that operation begins and for its duration. Activities with the potential to cause such a level of disturbance must therefore not be carried out between 1st December and 30th June.

**Determining use of a sett entrance by means of soft blocking. (Conditions relevant to determining if a sett, e.g. outlier or subsidiary, is currently being used. It should not be used for closure of a sett which displays signs of current activity, which should be undertaken in accordance with conditions A24 to A32)**

- A18 In order to determine the activity status of certain sett entrances, sett entrances must be lightly blocked using loose soil or untainted straw, hay, bracken or leaf litter not harmful to badgers. Monitoring must be carried out for a minimum of twenty-one (21) consecutive days at intervals of no more than three (3) days to determine whether badgers have used the sett entrances.
- A19 If monitoring demonstrates that badgers have not unblocked these sett entrances during the minimum twenty-one (21) day period, then steps must be taken immediately to hard-block and proof these sett entrance(s) to prevent badgers from reusing them.
- A20 Lightly blocked sett entrances which become unblocked by badgers during the twenty-one (21) day period must have one-way badger-gates installed, in accordance with Licence Conditions A23 - A31.

**Insertion of inspection equipment (e.g. endoscope camera) into the sett (if required)**

- A21 Any inspection equipment inserted into the sett must be done in such a way so as not to damage the sett entrance or any tunnel or chamber.
- A22 Any inspection equipment must be immediately retracted if the presence of badger(s) in the sett is confirmed.

**Exclusion of badgers by means of one-way gates**

- A23 The exclusion of badgers from their setts by means of one-way gates and destruction of the sett may only be carried out between 1st July and 30th November (inclusive) in any one year.
- A24 At the start of the operation, vegetation around the sett must be removed down to ground level only.
- A25 Un-gated entrances to tunnels which have been shown not to be occupied by badgers must be blocked or proofed against re-entry by badgers.
- A26 One-way badger gates, opening outwards, must be securely installed in all sett entrances displaying signs of possible occupation by badgers to allow badgers to exit from but not enter the sett.
- A27 The sett must be visited at intervals of no more than three (3) days to inspect the gate(s) to ensure that they open and close freely, and to check for signs of badgers having regained access to the sett.
- A28 The badger gate(s) must remain continuously in position for a minimum period of twenty-one (21) days following the last sign indicating possible access by badgers into the sett and until immediately before action is taken to destroy the sett or securely close access to it.
- A29 Measures to exclude badgers must remain in place until immediately before sett destruction or further measures to securely close access are carried out. In situations where the sett is

to be kept closed until works in the area are complete and then re-opened, monitoring must be undertaken at intervals of no more than thirty (30) days throughout the period of closure (see Recommendation c.). In the event badgers regain access to the sett after 30th November in any year the licence user must contact Natural England licensing team for advice on how to proceed.

- A30 Where for safety or other practical reasons it is not possible to install a one-way gate in every sett entrance, the sett must be enclosed by a badger-proof electric or wire mesh fence incorporating at least one (1) one-way badger gate(s), opening outwards, to allow badgers to exit from but not enter the fenced area. The gate(s) must be monitored in accordance with Licence Conditions A27-29.
- A31 Where operations have started prior to 9th November in any calendar year and it is found that badgers breach the proofing and an extension to the exclusion period is required, then the licence user must contact the Natural England licensing team for advice on how to proceed. An extension to the exclusion period up to 15 December may be granted in writing by Natural England.

### **Provision of artificial setts**

- A32 An artificial sett must be provided where closure or destruction of a sett (usually a main sett) results in there being no suitable alternative sett for the excluded badgers within their existing territory (such as an outlier or annex sett).
- A33 Any artificial sett must be constructed in a suitable location within the existing territory of the badgers which are being excluded and to the standard set out in HS2 Ecology Technical Standards (see Recommendation g). Construction must be completed in advance of starting the exclusion of badgers from their main sett.
- A34 Where an artificial sett has been constructed, action to exclude badgers from their sett may only begin once there is evidence that badgers have discovered the artificial sett (see Recommendation g).
- A35 At least 20% (rounded up to the nearest whole number) of artificial setts constructed must be monitored for use by badgers at least twice a year for up to 2 (two) years following the closure and destruction of the original sett. The results of the monitoring must be provided to Natural England.

### **Emergency operations – excavation of a sett or part thereof without prior exclusion (referred hereafter to as ‘live digging’)**

- A36 This licence permits the live digging of badger setts only under the following circumstances:
- Where the closure of a single tunnel or small part of a sett with limited activity is sufficient to allow works to proceed and avoid the need for full sett closure. Such works may involve the installation of a fence line or utility diversion/connection via a trench.
  - Other circumstances include where it is found that part of a sett has become damaged either by accident or unforeseen circumstances and it is necessary to take action to prevent harm to badgers.
- A37 This licence does not permit the live digging of badger setts to undertake works which are necessary but have been programmed incorrectly.
- A38 As soon as it becomes known that a ‘live dig’ is required, the Natural England licensing officer and HS2 area ecology lead must be informed. This must be in writing via email. In urgent, emergency situations, a request via telephone and verbal agreement is permissible so long as this is confirmed in writing as soon as possible afterwards, and in no more than 72 hours.
- A39 Digging into the sett may be undertaken with hand tools, or machinery with close supervision of the tunnel by a suitably experienced person.
- A40 The bucket on any mechanical excavator should be no wider than 60 cm (2 feet).
- A41 Where the operator is approaching a chamber and/or bedding material is visible, the excavation should be carried out by hand where possible.
- A42 The excavated site should be regularly inspected for any signs of badger digging and if any

evidence is found action should be taken immediately to prevent additional setts from being excavated.

- A43 Tunnels must be dug back, starting from their entrance, only as far as necessary to complete the operation. All tunnels discovered during the excavation must be either dug back to their ends or have access holes left open so as to avoid trapping badgers.
- A44 Provision must be made to allow any badgers which may be trapped in blind-ending tunnels to escape.
- A45 If the live-dig is not completed within one (1) day then the following measures must be put in place overnight to determine whether badgers have used the sett entrances prior to the next day of live-digging:
- a) trail cameras covering all sett entrances and/or
  - b) sett entrances must be lightly blocked using loose soil or untainted straw, hay, bracken or leaf litter overnight.
- A46 Any pipe used to reinstate part of the tunnel system must have an internal diameter no less than 30 centimetres (12 inches).
- A47 A suitable cage or similar equipment must be available at the site of work to retain any injured badgers for veterinary attention. Any uninjured badger found must be allowed to escape unless it is a dependent cub and there is good reason to believe that it will not survive. Provision must be made to ensure the welfare of any such cub.
- A48 Provision must be made for prompt veterinary assistance to deal with any injured badger.

#### LICENCE ANNEX RECOMMENDATIONS AND INFORMATION NOTES

- a. In order to prevent badgers from digging into the ground surrounding the sett, material capable of preventing access by badgers, such as heavy gauge chain-link netting, should be pegged down over the surface of the ground surrounding the gated entrances. Chain-link netting (if used) should be galvanised wire of 2.5mm gauge.
- b. Badger activity at the one-way badger gates should be monitored; for example, by placing small sticks in front of and/or behind the gate, tying a fine thread across the front of the gate, and/or smoothing the soil or sand in front of the gate in order to detect badger footprints. If sticks are used, care must be taken that they do not obstruct access to the sett or prevent closure of the gate if disturbed.
- c. A written monitoring schedule of badger activity at all sett entrances should be maintained and made available to Natural England upon request.
- d. The sett should be destroyed by digging back all tunnels as far as possible and backfilling with materials appropriate for the particular site, e.g. soil /concrete /expanding foam /rubble.
- e. After the sett has been destroyed or tunnels have been blocked, the area should be proofed against re-entry by badgers using material capable of preventing access by badgers. For example, chain-link netting or similar material laid on the surface of the ground and/or as a vertical barrier (buried to a depth of at least 1.5 metres below ground) and secured to prevent further access by badgers. If there is a delay before works are undertaken, the sett and proofing should be checked for signs of re-entry at least a month prior to works commencing. This would allow exclusion to be repeated prior to works taking place if badgers are found to have re-occupied the sett.
- f. Badger proof fencing should be constructed to a specification that prevents badgers from climbing over, pushing through and/or digging beneath it. Where possible, any badger gate(s) within the fence should be located over an existing badger path.
- g. Artificial setts should be constructed on dry ground within the affected social group's existing (pre-interference) territory and away from main roads, public rights of way or sources of danger to badgers. Artificial setts should provide a dry and well-ventilated (but not draughty) refuge for badgers, ideally with vegetative cover immediately around the

structure. Confirmation that badgers have found an artificial sett can be achieved through monitoring signs of badger activity such as: uptake of an attractive food such as peanuts and syrup, sand traps for paw prints, hair traps around the entrance and camera traps.

- h. For boring, piling etc activities it will be necessary to consider the impact using engineering impact reports and the knowledge of a suitably experienced ecologist. Likely impacts should be considered according to the circumstances of the site. Where suitable barriers exist between the sett and the works (e.g. a water body) or the topography of the land between the sett and works is such that vibration will not cause an issue, then sett closure should not be necessary.
- i. As a general guide, impacts are likely to be negligible where they occur >100m from the sett, but very likely to occur for the activities stated above within 30m of a sett. Between these guide distances expert engineering and ecological opinion will be required to determine likely impacts.