



Representing Drainage Water Level & Flood Risk Management Authorities

CL27 - Licence to interfere with badger setts for watercourse and drainage purposes

Advice Note

September 2021

Sofi Lloyd

Introduction

This advice note has been drafted by ADA and Internal Drainage Board (IDB) representatives in consultation with Natural England (NE). The aim of the advice note is to improve and align understanding amongst IDBs around how the CL27 Class Licence should be used and managed by IDBs.

This Q&A document must be read alongside the CL27 licence details available from the link below. This additional information is provided as a compliment to the details within the licence, is not a formal part of it and should not detract from any part of it. In any case of misunderstanding or perceived conflict of information, the CL27 licence details should be taken as the true position.

<https://www.gov.uk/government/publications/badgers-licence-to-interfere-with-setts-for-drainage-purposes/licence-to-interfere-with-badger-setts-for-watercourse-and-drainage-purposes-cl27>

1. Who actually needs to be registered under the CL27 licence?

Firstly, no-one actually “holds” this Class Licence, they just make a request to work under the terms set out in the licence details as a ‘Registered Person’. Once registered, they will be given a unique registered persons number.

Anyone working for an IDB (either as an employee or contractor) who is **themselves** undertaking watercourse maintenance and improvement works or construction of new drainage works where there is a risk that badger setts could be disturbed should make a request to become a Registered Person under this licence.

It is likely that most if not all IDBs would have at least one registered operatives under these licence terms as it is likely that they will at some point be undertaking some work near to a badger sett which could be deemed as sett interference or disturbance.



2. What activities constitute disturbance and sett interference?

While this could be considered somewhat subjective, and disturbance is not defined within the Protection of Badgers Act 1992, there are some guidelines within the licence terms.

It may be more helpful to set out what is an offence in the absence of a licence:

A person is guilty of an offence if, except as permitted by or under this [Badgers] Act, he interferes with a badger sett by doing any of the following things [or knowingly causes or permits the same]:

- *damaging a badger sett or any part of it;*
- *destroying a badger sett;*
- *obstructing access to, or any entrance of, a badger sett;*
- *causing a dog to enter a badger sett; or*
- *disturbing a badger when it is occupying a badger sett,*
- *intending to do any of those things or being reckless as to whether his actions would have any of those consequences.*

It is prudent to take a precautionary approach and assume that any works that could potentially cause a badger to be disturbed in some way should be considered. Some badgers are more tolerant than others and will happily live in setts underneath and next to busy roads and railways and in urban areas so appear to not “disturb” easily but there is no way of being sure so it is prudent to register any operatives who are likely to carry out any activity which has the possibility of causing disturbance. All activities which can be undertaken under these licence terms are deemed as “low risk” in terms of the likelihood of causing badgers injury and/or harm. If any activity is planned to be undertaken which is not within the activities described in this licence and associated guidance, with potentially greater impacts, such as the eviction and exclusion of badgers from setts or sett destruction, an Individual Licence will need to be applied for, details of which are available here:

<https://www.gov.uk/government/collections/badger-licences>

Permitted actions are also not covered by the class licence in the months of February, March or April.

3. Who actually registers for the licence?

Under the terms of the licence, only those **who will be undertaking the work on the ground** need to be registered to work under the licence terms so in fact it is they themselves who should request to be registered. In reality however, and to benefit from greater efficiency, both on the IDB side and NE side, the IDB will most probably act as the single point of contact for a range of operatives undertaking work for them, for administration and governance efficiency purposes. It is



most likely to be the IDB who would collate the details of all operatives who need to be registered and submit their details together to NE. NE will confirm whether an excel spreadsheet is acceptable in this regard. This is however outside the terms of the actual licence so ultimately it is up to the individual who is actually undertaking the work to ensure that they have the required licence and are adhering to the terms of it.

The operatives or Registered Persons do not need to re-register each year or renew their registration, but they do need to adhere to some annual reporting requirements in order to retain their Registered Person status under the licence. More information on reporting is detailed below and within the licence terms.

4. What level of knowledge should a Registered Person have?

The licence terms set out that “all persons using this licence must possess **appropriate** knowledge and experience of the relevant species”. It also sets out that “training applicable to the activities permitted by the licence should be undertaken at regular intervals”. This includes Assistants of Registered Persons. These responsibilities fall to the Registered Persons themselves by the terms of the licence and not the IDBs. But as we mentioned above, it would be expected that the IDB ensures that the Registered Person met these requirements and assisted them to do so where necessary, being as the Registered Person is undertaking work on the IDB’s behalf. NE have stated that while it is not explicitly stated within the licence, an IDB would be somewhat accountable if it were discovered for example that a badger sett had been damaged by a contractor who had registered themselves under the CL27 licence, but the IDB had not checked, regularly, that they possessed an appropriate level of understanding of the licence terms or badgers and their setts.

5. Who is legally liable if something “goes wrong”? The IDB or the Registered Person?

The Registered Person is responsible for the licensed actions they undertake. When operating machinery within close proximity to a badger sett, the Registered Persons is responsible for ensuring the permitted works comply with the Class Licence conditions. However, NE have stated that while it is not explicitly stated within the licence, an IDB would be held somewhat accountable if an offence occurred. Also NE state that it is expected, and essential for compliance with the licence, that that the IDB can prove that the Registered Person carrying out work on the IDBs behalf had been in receipt of an “appropriate” level of knowledge, awareness and practical training, which covered badgers and their setts specifically. Also, the same is true in terms of practical training on the use of machinery, to ensure that an appropriate level of competency was proven and recorded in order to minimize the potential damage they could cause through the operation of machinery.



6. How does the Registered Person demonstrate ongoing compliance with the licence terms?

The Registered Person has reporting requirements as set out in the licence terms which they are themselves responsible for meeting. In reality, it is likely that these reports will be made to the IDB by the operatives on a regular basis as specified by the IDB throughout the year. It is also likely that the IDB will collate and forward these records to NE to satisfy the annual reporting terms of the licence and to ensure that the Registered Persons remain registered and can continue their work for the IDB. A reporting template is available within the licence details. It is likely that some IDBs already incorporate this into their own reporting systems such as GIS and extract it to send to NE each year to support the continuation of registration for each registered person. NE are expected to confirm whether an excel spreadsheet is acceptable in this regard.

7. How is a licence “renewed”?

A Registered Person does not need to re-register every year. Providing their reporting requirements are met and they have operated within the terms of the licence, their registration to work under the terms of the licence should be automatically “renewed” each year by Jan 1st. Although a Registered Person has until 31st Jan to submit this evidence for the preceding year, which is slightly confusing!

8. What duty or responsibility does an IDB have to ensure an “appropriate” level of competency is held by each person registered to undertake work for them?

NE sets out no formal guidance in this regard. However, NE have confirmed that while it is not explicitly stated within the licence, an IDB would be held somewhat accountable if an offence occurred. Also NE state that it is expected, and essential for compliance with the licence that that the IDB can prove that the Registered Person carrying out work on the IDBs behalf had been in receipt of an “appropriate” level of knowledge, awareness and practical training, which covered badgers and their setts specifically.

It is strongly advised that that the IDB keeps records of the training received by each operative and contractor registered under the licence. This should include the practical operation of machinery and knowledge and awareness (such as field signs & habits) of badgers and their setts in order to demonstrate good governance. The IDB does have responsibilities to protect habitats and species under a range of other legislation so there is some risk in detaching itself from all responsibility. In particular, NE has made clear that an IDB should ensure that the persons they are registering to operate under the licence can demonstrate that they are fully aware of the terms within that licence and continue to be so. We suggest that this awareness is



regularly refreshed and reviewed to minimize knowledge fade. How frequently such activities are undertaken will have to be determined by each IDB.

9. Who is an Assistant under the Class Licence?

The Registered Person can choose to delegate certain low risk tasks under their direct supervision (see next section for definition of direct supervision). The Assistant does not need to be registered and it is understood by NE that there is a strong likelihood that the Assistant which the operative may use could change regularly and the IDB would not know the identity of such Assistants. It is the responsibility of the Registered Person to ensure that the Assistant demonstrates the same level of compliance with the terms of the licence as they do themselves.

10. What is direct supervision?

NE has confirmed that direct supervision means “in their presence”. So an Assistant could only undertake activities under the direct supervision of a Registered Person if they are physically in their presence.

11. Which licence does an operative work under when undertaking works under a PSCA?

A Registered Person can continue to work under the terms of the CL27 licence when carrying out work for the EA under a PSCA, while the activity being undertaken remains within the terms of the licence and the operational standards set by the EA. Otherwise the operative may need to be registered under the EA’s Organisational Licence. Either way, the operative and the IDB will need to ensure that the required EA standards relating to all aspects of the work are adhered to.

12. How does this apply to SSSIs?

Additional consent is required for any Registered Person to work under this licence within a SSSI and the Consent must be obtained prior to works commencing. See the licence for more details.

13. How should works be notified? (License condition - 1-2 days’ notice of works):

The purpose of this condition is so that NE can undertake compliance checks when/if deemed necessary. While the licence states that it is the registered person who should provide notification of works, NE have confirmed that they are happy to accept notifications from an IDB on behalf of a registered person. NE have requested that the process of notification should be as clear and



consistent across IDBs as possible so this may be an area where ADA could help to co-ordinate the development of some guidance for IDBs in this regard if necessary. NE has stated that:

“we do not expect to receive information on all known badger setts where works are planned during a given year, or when works are about to proceed in a specific IDB district. It should ideally be more specific, so we could undertake a planned compliance visit if the need arose”.

NE have requested that IDBs maintain records of known badger setts, and aim to submit notifications of relevant works to NE when works are close to being undertaken. Again this is something that ADA may be able to help to co-ordinate the development of some guidance for IDBs in this regard and will look to doing if necessary.

14. When does tracked machinery need to be used?

Wheeled machinery can be used from the opposite bank to a sett when access permits. But when relying on this licence to undertake the permitted activities, tracked machines must be used if working from the same bank where the sett is located. To note, if watercourse maintenance works are **not causing disturbance** and the licence is **not being relied upon**, a machine operator is **not restricted by licence conditions**. It takes someone with knowledge of badger ecology and a clear understanding of the likely impacts caused by the works, to make that judgement around whether works are likely to cause a disturbance or not.