

Constitutional Affairs Committee

CA(3)-07-11

CA570: The Badger (Control Area) (Wales) Order 2011

Procedure: Negative

The Order authorises the destruction of wild badgers in the control area to reduce the incidence of tuberculosis there. The control area comprises land in the counties of Ceredigion, Carmarthenshire and Pembrokeshire. The Order provides that the destruction of wild badgers must be accomplished by trapping and either shooting or giving a lethal injection, or by shooting without trapping. The carcase of a badger so destroyed is the property of the Welsh Ministers and may not be removed without their authority. It also makes it an offence to protect badgers with the intention of preventing their destruction and otherwise obstructing the implementing of the Order.

Technical Scrutiny

No points are identified for reporting under Standing Order 15.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 15.3(ii) in respect of this instrument – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

- 1.This Order revokes the Tuberculosis Eradication (Wales) Order 2009, which was quashed in July of 2010 by the Court of Appeal at the end of legal proceedings brought by the Badger Trust. (Since the previous Order has been quashed by the courts it does not strictly need to be revoked but this provision may be intended to make it as clear as possible that the previous Order no longer has any effect.)
- 2.The previous Order was quashed on a number of grounds relating to the Minister's reasons for making the Order. The Minister was required by the Animal Health Act 1981 to be satisfied that the cull would result in a substantial reduction in the incidence of TB in the area to which the Order related and this was expressed to be the whole of Wales even though the intention was actually to carry out a cull in a limited area. As a result, the consultation exercise carried out by the Minister, and the evidence which she took into account, did not relate to the whole of the area (the whole of Wales) to which the Order applied.
- 3.The Court was also not satisfied that the Minister applied the correct legal test when deciding whether the cull would result in a "substantial" reduction in the incidence of bovine tuberculosis nor that she had carried out a proper balancing exercise between the conflicting impacts of the Order on animal health and nature conservation.
- 4.After the original Order was quashed, the Welsh Government launched a new consultation exercise which started on 20 September 2010 and closed on 17 December 2010. The consultation related to the control area now referred to in the current Order. The Explanatory Memorandum also contains information to show that the Minister has considered issues that had not apparently been considered prior to the making of the original Order. Nevertheless, this general issue is of such public interest that opponents of the plan will, no doubt, be considering whether further litigation stands a realistic prospect of success.

Legal Advisers

Constitutional Affairs Committee

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