

Briefing: Online Safety Bill - Badger Baiting and Badger Crimes Online

Prepared by Badger Trust 6 June 2022

Summary

The Online Safety Bill aims to put in place an accountability framework for online technology companies to better protect users from harmful content encountered on online platforms. As has already been raised by animal welfare organisations, the bill does not currently acknowledge the harms caused to non-human animals, and the relevance of these activities towards the protection of young persons using online technologies. Of particular concern is the absence of cyber-enabled wildlife crime and badger persecution, both of which are listed as wildlife crime priorities by the UK Government.

Badger baiting on social media is a serious issue, with online platforms facilitating the sharing of information pertaining to badger persecution crime. The sharing of videos, images and commentary of badger baiting not only promotes and normalises violence towards protected wildlife and domestic animals, but the sharing of information online facilitates the organisation of these illegal activities and puts young people at risk. Given the interconnection between badger baiting and violent crimes against humans, inclusion of badger baiting in the Online Safety Bill will target several sections of the Bill concerning illegal and harmful content shared online.

The inclusion of badger baiting in the scope of the Online Safety Bill would further advance the government's obligation to prioritising badger persecution and cyber-enabled wildlife crime as [wildlife crime priorities](#) whilst demonstrating their commitment to the Bern Convention, the international treaty to which badgers are listed in Appendix III as protected species.

Definitions

The term "cyber-enabled wildlife crime" denotes the use of the internet to organise illegal wildlife activities such as the sale of wildlife products (such as ivory), the illegal import and sale of wild animals for the [exotic pet trade](#), and the organisation of illegal bloodsports. According to TRAFFIC, cyber-enabled [wildlife crime is an urgent conservation priority](#). Illegal wildlife traders [turn to social](#)

[media](#) sites like Instagram, TikTok, and messaging services like WhatsApp because activity on these sites can be difficult for police to follow

The term “badger persecution” refers to harm directed towards badgers (*Meles meles*), Britain’s largest remaining carnivore. Nocturnal and highly social, badgers are vital to British ecosystem health as [they act as ecosystem engineers](#) through their foraging and sett building activities. Badgers are one of the most protected of British wildlife according to UK Law and are also listed in [Appendix III](#) of the [Bern Convention](#). The [Protection of Badgers Act \(1992\)](#) prohibits sett disturbance, hunting, and intentional snaring activities.

The term “[badger baiting](#)” describes the intentional act of encouraging dogs to fight with badgers, and often coincides with the digging out of badgers from their setts. Both badger baiting and sett digging are prohibited activities under the Protection of Badgers Act (1992) and the Wildlife and Countryside Act (1989). Furthermore, the harm caused to the dogs involved also breaches the [Animal Welfare Act \(2006\)](#) as baited dogs often suffer severe facial injuries from fighting with badgers which are left without veterinary treatment for fear of being reported.

Despite its illegal status, badger baiting is a common activity, one which is now appearing in online spaces as persecutors of badger crime [film the violent, and often fatal, attacks](#) for later viewing and sharing on social media. Second only to road traffic instances, [badger baiting is the most common reason badgers receive veterinary attention](#) in the UK and reported instances of badger baiting [increased by 55% from 2019 to 2020](#).

Badger baiting- the extent of the problem

Contemporary badger baiting is typically conducted by gangs who send their terriers into badger sett entrances with a GPS tracking device attached to their collars. The individuals will follow the GPS signal to locate the dog’s position underground and set about digging the terrier and the badger out. For some individuals, the sport is a recreational activity, and [badgers are killed by either the dogs or the human perpetrators at the dig site](#). For others, badger baiting can be a lucrative subsidiary income as badgers are taken from the sett for baiting in make-shift spectated gambling arenas. Of the most recently secured prosecutions for badger baiting in the UK, those convicted were involved in other illegal activities including dog fighting, drug dealing and [violent crimes against humans](#). Therefore badger baiting is intimately connected to a variety of anti-social activities which are thriving in online spaces. Furthermore, internet users risk exposure to the illegal and harmful content of badger baiting at increasing rates as social media use also increases.

According to new research by Ofcom, UK adults now spend on average one-quarter of their waking day online, a record high. In its latest [Online Nation 2021 Report](#), Ofcom reported social media use grew rapidly throughout 2019-2020 as people sought ways to connect safely in the absence of in-person social opportunities. Video streaming platforms such as TikTok became most popular amongst younger audiences, with over half of 16 to 24-year old’s (54%) having a TikTok account during that time. An ongoing investigation by Badger Trust into badger persecution shared online has

shown that TikTok is one of the social media platforms where badger baiting is proliferating. Young users have been observed freely sharing content on TikTok which depicts clear breaches of the Protection of Badgers Act (1992) and the Animal Welfare Act (2006). These materials are being viewed thousands of times by a predominantly teenage and young adult demographic. The normalisation of such brutal activities is putting both young people, wildlife, and domestic animals at risk as users are encouraged to take part in this illegal and violent activity. The publically accessible nature of badger baiting footage shared online is evidence that social media platforms such as TikTok are not managing the risk of harm towards animals and children that are being exacerbated on their platforms.

Harm caused to people, particularly children

[Exposure to violence against animals causes psychological harm to children](#) and there is mounting evidence to suggest that [crimes against animals can lead to crimes against humans](#). The normalisation of wildlife crime on social media is therefore within the remit of the proposed Online Safety Bill's commitment to protect children from harm and to ensure that illegal activities are not permitted to thrive online. An undercover documentary by the BBC in 2019 not only found that social media was used by criminals involved in badger baiting to socialise, but the [gangs used the internet to recruit new participants to the illegal blood sport](#). Thus, children exposed to badger baiting online may be at risk from grooming by criminal gangs. With online usage increasing alongside badger baiting, it is vital online technological companies respond to badger baiting as a cyber-enabled wildlife crime.

It is likely that many social media users are unaware that badger persecution is a criminal offence, and so social media must be proactive in recognizing when the content being shared is in breach of the law. In February 2022, a YouGov Poll which sampled a random representative sample of 1,676 British adults, found [64% of participants were unaware that badgers are legally protected](#). The sharing of badger baiting materials online therefore furthers the misconception that the sport is not prohibited by law. Online technologies must take responsibility for badger baiting shared on their platforms given its illegal status and the harm it causes to wildlife, the ecosystem, and young persons including children.

Badger Trust's initial research confirms that the majority of participants in badger baiting shared to online platforms are pre-adolescents (teenagers and children), a trend which is similarly observed in badger baiting prosecutions which frequently involve minors as perpetrators and witnesses to the violence of badger baiting. In all recent successful prosecutions secured against criminals for badger baiting, the police cases were [secured through evidence collected on social media](#). It is typical practice for badger baiters to share footage of the violent crimes on social media such as Facebook and TikTok. It is therefore clear that whilst online technologies do not seem to be recurrently committed to protecting children or wildlife, social media can be a useful tool to combat badger baiting. Online technology companies must therefore integrate measures for reporting badger persecution to the police, either by calling 999 (for crimes occurring in real time, such as those instances shared via "live streaming", or by calling 111 (for crimes which were recorded prior to being shared online).

Currently, the onus is on the user to report instances of violence online. Without users being informed as to the illegal nature of the content they are witnessing, it is not possible for these materials to be appropriately reported. Either the Bill must stipulate that it is the responsibility of the online technology provider to integrate reporting (ie. algorithms set to remove, privately store and report to the police content in breach of the Protection of Badgers Act 1992) or the technological companies must provide ways for users to be informed about badger persecution crimes so that the user can report badger persecution content to the social media platform and the relevant authorities.

Ensuring that protection from animal abuse content is included in the Online Safety Bill: Suggested amendments.

Unless explicitly included within the scope of the Bill, there is the risk that badger baiting content that is harmful to children and adults may be overlooked. It is, therefore, important for some amendments to the wording of the current draft of the Bill to ensure that the type of content of concern a) can fall within its scope, b) will be considered when the scope is further defined and c) the relevant stakeholders will be included in those discussions.

Illegal Content

To ensure animal abuse is included within the definition of illegal content and therefore subject to the safeguards, such as a risk assessment and effective management to remove the content, some amendments would need to be made. Currently, the Bill as introduced to Parliament does not list animal abuse as an offence in Schedule 7. The current draft states:

52 “Illegal content” etc

...

(2) “Illegal content” means content that amounts to a relevant offence.

(3) Content consisting of certain words, images, speech or sounds amounts to a relevant offence if—

(a) the use of the words, images, speech or sounds amounts to a relevant offence,

(b) (in the case of a user-to-user service) the use of the words, images, speech or sounds, when taken together with other regulated user generated content present on the service, amounts to a relevant offence,

(c) the possession, viewing or accessing of the content constitutes a relevant offence, or

(d) the publication or dissemination of the content constitutes a relevant offence.

...

(4) “Relevant offence” means—

(a) an offence specified in Schedule 5 (terrorism offences),

(b) an offence specified in Schedule 6 (offences related to child sexual exploitation and abuse),

- (c) an offence specified in Schedule 7 (other priority offences), or
- (d) an offence, not within paragraph (a), (b) or (c), of which the victim or intended victim is an individual (or individuals)

The following can be included in Schedule 7 to ensure that badger baiting is listed as an offence:

Badger Baiting

23 An offence under any of the following provisions of the Protection of Badgers Act 1992—

- (a) section 1 (taking, injuring, or killing badgers);
- (b) section 2 (cruelty);
- (c) section 4 (selling and possession of live badgers);

25 An offence under any of the following provisions of the Animal Health and Welfare (Scotland) Act 2006—

- (a) section 19 (unnecessary suffering);
- (c) section 21 (cruel operations);
- (e) section 23 (fighting);
- (f) section 24 (ensuring welfare of animals).

26 An offence under any of the following provisions of the Welfare of Animals Act (Northern Ireland) 2011

- (a) section 4 (unnecessary suffering);
- (b) section 5 (prohibited procedures);
- (c) section 7 (administration of poisons);
- (d) section 8 (fighting);
- (e) section 9 (ensuring welfare of animals).

Section 52 could also be amended as follows (amendment underlined):

Section 52

...

- (4) “Relevant offence” means—
- (a) an offence specified in Schedule 5 (terrorism offences),
- (b) an offence specified in Schedule 6 (offences related to child sexual exploitation and abuse),
- (c) an offence specified in Schedule 7 (other priority offences), or
- (d) an offence, not within paragraph (a), (b) or (c), of which the victim or intended victim is an individual (or individuals) including both human and

non-human animals including badgers.

The optimal protection would be to have illegal content include offences that would be illegal in either the UK or the country it took place in, regardless of whether it took place in the UK.

OFCOM Codes of Practice

OFCOM must produce Codes of Practice offering guidance on how regulated services can comply with their duties. To help ensure animal abuse content is covered in the Code of Practice, the following amendments can be included to schedule 4, which includes the principles that must be followed by OFCOM when creating the Codes (amendments underlined):

Schedule 4

Online safety objectives

3 OFCOM must ensure that measures described in codes of practice are compatible with pursuit of the online safety objectives.

4 The online safety objectives for regulated user-to-user services are as follows---

(a)

....

(x) there are adequate safeguards to monitor cruelty towards animals including badgers

(xi) badger baiting content is reported to the relevant authorities

5 The online safety objectives for regulated search services are as follows—

(a)

...

(vii) the systems and processes are appropriate to detect cruelty towards humans and animals including badgers

It is important to also ensure that campaigning groups are included in the consultation process for the Code of Practice under section 37 by adding (amendment underlined):

(6) In the course of preparing a draft of a code of practice or amendments of a code of practice under this section, OFCOM must consult ---

]

(k) the National Wildlife Crime Unit (Badger Persecution Priority Delivery Group)

(l) organisations that campaign for badger protection

Super complaints

Under section 140, there is a power for eligible entities to make complaints to OFCOM if a regulated service is causing harm. To ensure campaigning groups can make such complaints regarding badger baiting content, there should be additional language (amendments underlined):

(1) An eligible entity may make a complaint to OFCOM that any feature of one or more regulated services, or any conduct of one or more providers of such services, or any combination of such features and such conduct is, appears to be, or presents a material risk of—

...

(1)(d) harm to any human or animal including badgers

(4) Regulations under subsection (3) must specify as one of the criteria that the entity must be a body representing the interests of users of regulated services, or members of the public, or a particular group of such users or members of the public, or a particular group that campaigns for badger protection, or the National Wildlife Crime Unit

Public interest

It is important that the Bill does not make it illegal to use images and video footage depicting badger baiting if the purpose of that use is to inform or educate the public about an issue. There are currently only minimal safeguards to protect such content, such as vague freedom of expression protections, and protections for journalism and content of democratic importance for category 1 user to user services. It is therefore important to try and ensure a general public interest exemption for both user to user and search services. The current provisions could be expanded as follows (amendments underlined):

Section 19

(1) This section sets out the duties about freedom of expression and privacy which apply in relation to regulated user-to-user services as indicated by the headings.

All services

(2) When deciding on, and implementing, safety measures and policies, a duty to have regard to the importance of protecting users' right to freedom of expression within the law, this includes the expression of watchdog organisations acting in the public interest and organisations campaigning for badger protection

Section 29

(1) This section sets out the duties about freedom of expression and privacy which apply in relation to all regulated search services.

(2) When deciding on, and implementing, safety measures and policies, a duty to have regard to the importance of protecting the rights of users and interested persons to freedom of expression within the law, this includes the expression of watchdog organisations acting in the public interest and organisations campaigning for badger protection

Category 1 user to user services are required to protect journalistic content and content that is important for democracy. Currently, it is possible that photos and footage from campaigning groups intending to inform would not be captured by the exemption for journalism or democracy. To help ensure such content falls within scope the following amendments could be adopted:

Section 15

(6) For the purposes of this section content is “content of democratic importance”, in relation to a user-to-user service, if—

(a) the content is—

(i) news publisher content in relation to that service, or

(ii) regulated content in relation to that service; and

(b) the content is or appears to be in the public interest or specifically intended to contribute to democratic political debate in the United Kingdom or a part or area of the United Kingdom.

Section 16

(8) For the purposes of this section content is “journalistic content”, in relation to a user-to-user service, if—

(a) the content is—

(i) news publisher content in relation to that service, or

(ii) regulated content in relation to that service;

(b) the content is generated for the purposes of journalism, including by campaign groups acting as public watchdog and the National Wildlife Crime Unit; and

(c) the content is UK-linked.

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