

Draft Wildlife (Jersey) Law 201- Consultation Response Report



DRAFT WILDLIFE (JERSEY) LAW 201- Consultation Response Report

Executive Summary

On the 16 October 2018 Growth Housing and Environment issued a consultation paper and accompanying online survey on the draft Wildlife (Jersey) Law 201-. The new Law if adopted, will replace the existing Conservation of Wildlife (Jersey) Law 2000 as the primary legislation in Jersey protecting wildlife from harm.

This document provides a summary of the responses to and the outcome of that Consultation. Detailed responses are provided in the supporting document attached.

The consultation paper generated 68 responses in total; 61 through the online survey and 7 responses by paper or e-mail. Respondents included organisations such as ecological consultants and charitable bodies and a wide range of interested individuals including academics, wildlife survey volunteers and individuals with a personal interest in the outcome of the project.




The consultation was divided into seven parts, which considered the main areas of the draft Law. Each area was supported by a clear majority of responses, and overall the proposed new legislation was well-received. All of the suggestions and concerns raised have been considered and will be used to amend the draft Law as appropriate prior to lodging for debate by the States.

For the purpose of providing the Respondents with as detailed feedback on the Consultation as possible, this document addresses each question raised by the Consultation (some of which are grouped for convenience), summarises the responses received and provides Government comments.

A small number of comments raised were outside the scope of the consultation paper. These responses were nevertheless gratefully received, and will be given due consideration during the finalisation of the new Law.

1. Definitions for 'Wild Animal' and 'Wild Bird'

Question 4. The draft Wildlife (Jersey) Law amends the definitions given for 'wild animal' and 'wild bird' to ensure that only those animals and birds that are 'naturally occurring' are considered wild for the purposes of the law. Captive bred animals and birds (and their offspring) are also excluded. Do you support the proposed amended definitions?

| | | Response Percent | Response Total |
|-----------------|------------|--|----------------------|
| 1 | Yes |  | 72.88% 43 |
| 2 | No |  | 15.25% 9 |
| 3 | Don't know |  | 11.86% 7 |
| Analysis | Mean: | 1.39 | Std. Deviation: 0.69 |
| | Variance: | 0.48 | Std. Error: 0.09 |
| | | Satisfaction Rate: | 19.49 |
| | | | answered |
| | | | 59 |
| | | | skipped |
| | | | 2 |

Whilst the majority of respondents supported the proposed definitions, some sought clarification on how the term 'naturally occurring' would be interpreted and on the implications for ensuring the appropriate protection of migrant and vagrant species (such as wild birds which have been blown off course on migration).




Response

The advice received from the Law Officers' Department is that since the arrival of migrant and vagrant species is through natural means (ie. without human intervention) they will be taken to have occurred "naturally", and thus deemed "wild" for the purposes of the Law, even if such a natural occurrence is not normal.

For the avoidance of any doubt, resident species that may in historical times have been introduced by human intervention (such as the red squirrel for example) but which satisfy the criteria for protection under the Law will be listed as a protected species under the appropriate Schedule to the Law.

2. Schedules and Levels of Protection for Wild Animals, Birds and Plants

Question 5. The draft Wildlife (Jersey) Law introduces amendments that allow for varied levels of protection to be afforded to the wild animals, birds and plants listed within the law's schedules, in order to ensure that rarer species have greater protection than common species. These amendments also take into account the outcome of the First Quinquennial Review of the schedules to the existing law, which resulted in the removal of some species from the current schedules as well as the addition of others. Do you agree with the proposed Schedules of Protected Species and their associated levels of protection?

| | | | | | | | Response Percent | Response Total | | | |
|-----------------|------------|------|-------------|---|---|-----------------|------------------|--------------------|----|----------|----|
| 1 | | Yes | | |  | | 70.00% | 42 | | | |
| 2 | | No | | |  | | 20.00% | 12 | | | |
| 3 | Don't know | | |  | | 10.00% | 6 | | | | |
| Analysis | Mean: | | | | 1.4 | Std. Deviation: | 0.66 | Satisfaction Rate: | 20 | answered | 60 |
| | Variance: | 0.44 | Std. Error: | 0.09 | | | | | | | |

In general there was good support for introducing new Schedules of Protected Species and their associated levels of protection. There were no objections to the inclusion of invertebrates, marine species, fungi and lichens species listed under the new schedules.

Comments did include a concern regarding which species received which protection under specific articles of the law and which schedule it was listed under, specifically in respect to some marine species, hedgehogs, reptiles and amphibians.

There was also concern why specific bird species did not receive any protection and sought evidence related to why they are not protected. There was also confusion on what protection some of the new schedules offered to the protection of the species itself (Schedule 6 – wild animals and birds which are protected from disturbance) and its breeding/resting place (Schedule 4 - Wild animals whose breeding sites and resting sites are protected).

Response

Feedback will be provided and sent directly to the taxon specialist groups regarding levels of protection and what schedule they are listed on for hedgehogs, some marine species, some invertebrate species and amphibians and reptiles. The assessment processes and evaluation methodology will be explained and revaluation will be carried out where new evidence and rationale has been provided. The same will apply for bird species listed on Schedule 2 that are not protected.

Schedule 4 offers a further level of protection on the breeding sites or resting sites of certain wild animal species. It extends protection from the deliberate damage of the animals 'den' or 'nest'




itself, to other areas upon which these animals are dependent for breeding and survival, such as temporary resting place or hibernation sites.

Under our international obligations the protection of breeding and resting sites is a requirement for those wild animals that are listed in Appendix II of the Bern Convention on the Conservation of European Wildlife and Natural Habitats, and also for those wild animals listed in Appendix II of the Bonn Convention on the Conservation of Migratory Species of Wild Animals (including Eurobats). There is also scope to add animals that are not listed under these conventions should there be evidence that they are locally critically endangered, endangered or vulnerable.

Schedule 6 offers further protection making it an offence to deliberately disturb those species on this Schedule whether or not they are at their den or nest. This additional protection provision was considered necessary to ensure full compliance with Jersey’s international obligations under the Bern and Bonn Conventions. There is also scope to add species if they not be listed under these conventions should there be evidence they are locally critically endangered, endangered or vulnerable.

3. Protection of dens, nests, breeding sites and resting sites

Question 6. The draft Wildlife (Jersey) Law strengthens and clarifies the protection given to the dens and nests of protected species. The law also provides for the wider breeding sites and resting sites of certain species to be protected, to be listed on a new schedule. A further new schedule would provide year-round protection to the nests of certain wild birds. Do you support the proposed extended protection provisions?

| | | Response Percent | Response Total |
|-----------------|------------|--|----------------------|
| 1 | Yes |  | 83.33% 50 |
| 2 | No |  | 6.67% 4 |
| 3 | Don't know |  | 10.00% 6 |
| Analysis | Mean: | 1.27 | Std. Deviation: 0.63 |
| | Variance: | 0.4 | Std. Error: 0.08 |
| | | Satisfaction Rate: | 13.33 |
| | | answered | 60 |

In general, overwhelming support was received for the principle of extended habitat protection, particularly the proposal to ensure year round protection of nests of certain wild birds such as barn swallows.

Some responses to this question were linked to the Schedules of Protected Species and their associated levels of protection. These comments are addressed under ‘Schedules and Levels of Protection’ above.

Some respondents sought clarification regarding the proposed publication of practical guidance in respect of the application of the Law in this area, and how such guidance would be used as evidence in court proceedings where a potential offence has been committed.

A suggestion was also received relating to specific wording of the protection provisions as they apply to bat species and the need to ensure full compliance with Jersey’s obligations with regard to species of European conservation concern.

Response




The Schedule of protected species whose ‘breeding site’ and ‘resting site’ is protected under the Law, is broad and includes wild animals and wild birds with very different needs and behaviours during their life cycle. For this reason further definition will be needed to reflect these differences and to provide practical guidance as to how as they should be considered in practice for individual species, or groups of species, such as amphibians for example. Such guidance will be evidence based, taking into account the particular ecological and habitat requirements and potential threats affecting our protected species.

Based on comments received concerning guidance surrounding ‘breeding sites’ and ‘resting sites’, drafting options are being considered to clarify and strengthen the enforceability of any guidance published.

Whilst Jersey is not strictly required to be compliant with EU Law, the island is committed (under the Bern and Bonn Conventions and associated Agreements) to protecting bats and other species of European concern in all circumstances unless authorised under an appropriate permit. In order to ensure full compliance in this respect the provisions for bats and other species of European concern under Articles 7 and 8 of the Law have been amended to clarify that it will be an offence to interfere with these species or with their dens or nests unless in accordance with a licence.

4. Areas of Special Protection

Question 7. The draft Wildlife (Jersey) Law introduces new provisions for an Area of Special Protection (ASP) to be declared by Ministerial Order, placing restrictions on access to (or activities within) a physically or temporarily defined area, within which protected species may be breeding or growing. An ASP will only be declared with the support of the owner(s) of the land affected and may be declared to apply temporarily, such as during the breeding season, or all year round. Do you support the provisions for Areas of Special Protection?

| | | | | | | Response Percent | Response Total | |
|-----------------|------------|--|-----------------|------|--------------------|------------------|----------------|----|
| 1 | Yes |  | | | | 90.16% | 55 | |
| 2 | No |  | | | | 4.92% | 3 | |
| 3 | Don't know |  | | | | 4.92% | 3 | |
| Analysis | Mean: | 1.15 | Std. Deviation: | 0.47 | Satisfaction Rate: | 7.38 | answered | 61 |
| | Variance: | 0.22 | Std. Error: | 0.06 | | | skipped | 0 |

Whilst consultees expressed broad and positive support for the concept of Areas of Special Protection, there was concern for its effectiveness in practice in the event that landowners should not be willing to support designations.




Response

The proposed lack of ability to implement this designation onto landowners was intentional due to other means available for land protection such as designation as Sites of Special Interest under the Planning & Building (Jersey) Law 2002.

However various comments have indicated that a mechanism to impose controls on landowners would be well supported and this article will be reviewed to seek additional powers for the purpose of protecting vulnerable wildlife.

5. Methods of killing or taking all wild birds and wild animals

Question 8. The draft Wildlife (Jersey) Law seeks to improve on the existing law by establishing a clear and flexible framework for regulating the means of taking all wild animals and birds without causing harm. This is achieved by creating a new schedule of regulated devices, substances and activities, which may be updated and amended to take account of developments in techniques and devices available. Provision is also allowed within the schedule itself for certain prohibited devices to be used under certain circumstances (such as educational pond dipping) and this will be supported by published guidance. Do you support the proposed framework?

| | | | | | | Response Percent | Response Total | |
|-----------------|------------|--|-----------------|------|--------------------|------------------|----------------|----|
| 1 | Yes |  | | | | 83.33% | 50 | |
| 2 | No |  | | | | 1.67% | 1 | |
| 3 | Don't know |  | | | | 15.00% | 9 | |
| Analysis | Mean: | 1.32 | Std. Deviation: | 0.72 | Satisfaction Rate: | 15.83 | answered | 60 |
| | Variance: | 0.52 | Std. Error: | 0.09 | | | skipped | 1 |

The proposed new framework was supported by the broad majority of respondents, with only some concern for the need to ensure that appropriate guidance is issued surrounding the use of permitted devices and methods of capturing protected species.

It was suggested by one respondent that the Schedules of prohibited devices that may not be sold (Schedules 8 and 9) may need revision.

Response




The appropriate use of devices and capture methods that are listed as permitted under the Law will, in some cases, be different when applied to one type of species than another.

Guidance will clarify and ensure that permitted devices and capture methods are used appropriately and according to prevailing best practice.

A further review of Schedules 8 and 9 and associated provisions within the Law will be carried out and any amendments incorporated within the final draft.

6. Release of Animals, Birds and Plants into the wild

9. The draft Wildlife (Jersey) Law introduces a range of provisions to prevent and control the release of animals, birds and plants into the wild to ensure that there are no adverse impacts on the environment. Only those animals, birds or plants that are listed in a new schedule may be released into the wild, others may be released only in accordance with a licence granted to do so. Additional provisions enabling action to be taken to control or eradicate invasive non-native species (INNS) are also included, in association with a new Schedule of INNS to be added. Do you support the proposed provisions to prevent and control the release of animals, birds and plants into the wild?

| | | | | | | Response Percent | Response Total | |
|-----------------|------------|--|-----------------|------|--------------------|------------------|----------------|----|
| 1 | Yes |  | | | | 88.33% | 53 | |
| 2 | No |  | | | | 1.67% | 1 | |
| 3 | Don't know |  | | | | 10.00% | 6 | |
| Analysis | Mean: | 1.22 | Std. Deviation: | 0.61 | Satisfaction Rate: | 10.83 | answered | 60 |
| | Variance: | 0.37 | Std. Error: | 0.08 | | | skipped | 1 |

Generally this proposal has been well supported with only industry concerned about the implications of controlling the release of shellfish into the wild. This specific issue can be addressed in guidance and appropriate licensing.




Response

Whilst some respondents sought greater controls on the pet trade, it is not considered appropriate to use wildlife legislation to control this area of concern, as there are various animal health, welfare and import legislation available.

Education is obviously the key to resolving the problem of invasive species and the proposed amendments will offer additional controls and prohibitions.

7. Licences

Question 10. The licensing framework within the draft Wildlife (Jersey) Law has been improved, updated and extended to enable present-day activities affecting wildlife to be regulated and enforced appropriately. Read a summary explanation of this area of the law Do you support the proposed licensing framework?

| | | | | | Response Percent | Response Total |
|-----------------|------------|--|-----------------|------|--------------------|----------------|
| 1 | Yes |  | | | 88.33% | 53 |
| 2 | No |  | | | 3.33% | 2 |
| 3 | Don't know |  | | | 8.33% | 5 |
| Analysis | Mean: | 1.2 | Std. Deviation: | 0.57 | Satisfaction Rate: | 10 |
| | Variance: | 0.33 | Std. Error: | 0.07 | | |
| | | | | | answered | 60 |
| | | | | | skipped | 1 |

In general, broad support was received for the proposals to update and strengthen the licensing framework.

Some comments and suggestions were received concerning the keeping of protected wild birds for falconry.

Response

Following a review of the licensing provisions as they apply to wild birds, an amendment has been proposed to the Law that will enable the licensing of captive bred birds only for falconry purposes.

8. General Comments

Question 11. Please comment below if you have any other comments regarding the draft legislation. Read the draft legislation

| | | | | | Response Percent | Response Total |
|---|---------------------|--|--|--|------------------|----------------|
| 1 | Open-Ended Question | | | | 100.00% | 30 |

A number of general comments and suggestions were received, many of which expressed support for the new Law as an improvement on existing legislation. All comments have been considered and will be taken into account in finalising the draft Law, which once available, will be published online.

Conclusion

We would like to take this opportunity to thank those who took the time to participate in this consultation. The comments and information gathered during this process were invaluable in informing the final document that will be put before the States Assembly for approval. The positive engagement with those who use work with or take an interest in Jersey's wildlife will ensure that the Law provides a sound but proportionate platform for effective protection.