

DRAFT WILDLIFE (JERSEY) LAW 201-

Consultation Paper

Summary

This consultation invites comments from stakeholders on the draft Wildlife (Jersey) Law 201- through the completion of an online questionnaire. The consultation responses will be reviewed before finalising the draft Law and lodging a proposition for States debate.

Outline of the consultation

The Minister for the Environment is proposing to replace the existing Conservation of Wildlife (Jersey) Law 2000 with new legislation that achieves modern outcomes and complies with the Island's international environmental responsibilities. The draft Wildlife (Jersey) Law 201- ('the draft Wildlife Law') is based on the following key principles:

- to provide a modern approach to wildlife conservation, incorporating appropriate and up to date terminology
- to meet the requirements of Jersey's international responsibilities for the protection of wildlife and habitats
- to provide a flexible framework that reflects different levels of protection for wildlife
- to allow for a more effective and efficient system of regulating and enforcing activities affecting protected species

What we want you to comment on

The online questionnaire invites comments on the main changes within the draft Wildlife Law that are outlined in this consultation paper. There is also opportunity for comments to be made on other aspects or on the draft Law in general.

Readers are nevertheless welcome to comment on any aspect of this consultation paper as they see fit.

Background

The draft Wildlife (Jersey) Law 201- ('Wildlife Law') will replace the existing Conservation of Wildlife (Jersey) Law 2000 as the primary legislation in Jersey protecting wildlife from harm. It is a critical component of the transposition into domestic law of the Island's international obligations under a number of multi-lateral environmental agreements (MEAs), notably:

- The Convention on Biological Diversity (The Rio Convention) (CBD)
- The Convention on the Conservation of European Wildlife and Natural Habitats (The Bern Convention)
- The Convention on the Conservation of Migratory Species of Wild Animals (The Bonn Convention) (CMS) and associated Protocols and Agreements that have been extended to Jersey

Some of the responsibilities arising under these MEAs are broad and wide-reaching (eg. general obligations to conserve and enhance biodiversity), whilst others require species-specific measures concerning rare or threatened species that are listed in Appendices to each Convention. Jersey has a number of wild animals, birds and plants that are of European and international concern.

Problems with the current Law

In the years since the Conservation of Wildlife (Jersey) Law 2000 was implemented, UK Law and international legislation and policy for the conservation of wildlife and habitats has been further developed and strengthened. MEA member countries (including UK) have agreed new targets to conserve wildlife and habitats, for example, the undertaking made at the latest CBD Conference to review national strategies for wildlife conservation.

Similarly at local level developments in policy have included the adoption of the Jersey Island Plan in 2011, the launch of the Jersey National Park and the new Rural Economy Strategy 2017 to 2021. These developments provide the basis for strengthened wildlife protection provided that they can be supported and enforced through effective wildlife legislation.

In recent years modern application of the Conservation of Wildlife (Jersey) Law 2000 has highlighted a number of problems, gaps and inconsistencies. These include a lack of clarity over interpretations in the Law, gaps in coverage, and outdated licensing provisions that prevent effective regulation and enforcement of activities affecting protected wildlife. Most importantly it has become apparent that the legislation does not enable the Island's MEA obligations to be met fully or effectively, or to apply different levels of protection to individual species or groups of species in line with their local or international conservation status.

In December 2016 the Natural Environment, States of Jersey carried out its first Quinquennial Review of the existing Schedules of wild animals, wild birds and wild plants

that are protected under the Conservation of Wildlife (Jersey) Law 2000. The Review identified the need for a number of species to be added or removed from the Law, as well as to provide for different levels of protection.

For full details on this Review and the outcome thereof please refer to the supporting document entitled 1st Quinquennial Review of Schedules 1, 2 & Protected Plant Order (2009) of the Conservation of Wildlife (Jersey) Law 2000 (CWL) Responses and Summary Report.

The aims and objectives of the new Wildlife Law

The new Law seeks to provide a modern approach to wildlife conservation, incorporating appropriate and up to date terminology and fully meeting the requirements of Jersey's international responsibilities.

The Law will provide a flexible framework that reflects different levels of protection for wildlife and allows for a more effective and efficient system of regulating and enforcing activities affecting protected species.

The main changes within the new Wildlife Law

Whilst the new Law differs in many minor respects from the previous Law, it also introduces a number of major amendments and additions as follows.

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

The problem

Under the current Law the terms 'wild animal' and 'wild bird' are defined as follows:

"wild animal" means any animal other than a bird which is or, before it was killed or taken, was living wild;

"wild bird" means any bird of a kind which is ordinarily resident in or is a visitor to Jersey in a wild state, but does not include poultry.

These definitions have the effect of extending the protection provisions to animals and birds which may in fact need to be controlled rather than protected. Ferrets, for example, are non-native to the Island; they were originally brought to the Island as pets and for use in hunting for rabbits, but have since established self-sustaining populations in the wild. These animals prey on our native species, particularly ground-nesting birds, and should not be protected.

The Solution

The new definitions state that to be considered 'wild' for the purposes of the law an animal or bird should be of a species that is 'naturally occurring' in Jersey. The definition also excludes:

- (a) animals and birds (and their offspring) which may originally have been captive bred or domestic but for whatever reason are living and/or breeding freely (except for those legally released as part of captive breeding programmes, such as the red-billed chough); and
- (b) Invasive non-native species (see section 6 below)

These changes are brought into effect in Part 1 (Interpretation and Application) of the new Wildlife Law.

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

The Problem

Under the current Law, all wild animals, birds and plants that are listed in the associated Schedules are afforded the same level of protection from the various activities defined within the Law. This is regardless of differences in local status including the species distribution, threat and rarity. Thus a shrew for example, which is native to the Island but relatively widespread, is protected to the same degree as the grass snake, which is one of our rarest species. Whilst both animals are in need of some form of protection, protecting them to the same degree can be difficult to justify in many situations.

Solution

The new Law introduces a number of amendments to enable provision for a hierarchy of protection to be afforded to protected wild animals, birds and plants. These amendments take into account the decisions made as a result of the 1st Quinquennial Review of the Schedules referred to above.

The amendments include the following:

- a) The existing Schedules of protected wild animals, birds and plants are amended to ensure that listed species can be protected from some or all of the various regulated activities, in accordance with their respective levels of conservation concern
- b) In addition, the following new Schedules are added:
 - Schedule of protected wild birds that re-use their nest
 - Schedule of wild birds and wild animals that are protected from disturbance and harassment
 - Schedules of wild animals and wild birds whose breeding sites and resting places are protected (*see 3 below*)
- c) The level of protection assigned to each animal, bird and plant will be defined and periodically reviewed according to a set of criteria relevant to Jersey whilst meeting International Union for Conservation of Nature (IUCN) criteria and guidelines.

Article 5 of the draft Wildlife Law provides the full list of Schedules of protected wild animals, birds and plants to the new Law.

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

The current Law provides protection for the 'dens' of protected wild animals and the 'nests' of protected wild birds, whilst they are in use.

The Problem

The definitions for 'den' and 'nest' and the associated protection provisions are unclear in a number of ways. For instance, a pond, in which toads and amphibians might breed, may not always be an easily definable structure. Furthermore, the definition of a 'den' does not take account of the wider area upon which many wild birds and animals rely for breeding and survival, such as migratory resting places or hibernation sites.

The current Law also limits protection to the time during which the den or nest is occupied for breeding. Barn swallows, which migrate from Africa to breed here each year are known to be extremely faithful to nests used in previous years for breeding success. However the lack of protection for these nests over the winter period during the birds' absence means that there is no guarantee that the birds will be able to return to breed in the same spot the following year.

This limited protection does not meet the Island's MEA commitments to protect the breeding and resting sites of migratory species of European concern.

The solution

The new Law achieves greater clarity in three ways:

- a) the definitions for and application of the terms 'dens' and 'nests' is clarified
- b) provision is made for additional protection to be given to the 'breeding sites' and 'resting places' of certain protected wild animals and birds, which are listed on a new Schedule to the Law.
- c) additional long term protection is also given to the nests of certain wild birds, such as the Barn swallow, which are also listed on a separate new Schedule to the Law.

The protection given to dens, nests, breeding sites and resting sites of protected wild animals and birds is fully described in Part 2 of the draft Wildlife Law.

4. Areas of Special Protection

The new Law introduces provisions for an additional level of protection, to be known as an Area of Special Protection ('ASP'), to be placed on a physically defined area within which

protected species may be breeding or growing. This protection may be applied temporarily, such as during a breeding season, or all year round.

An Area of Special Protection ('ASP') will be designated by Order made by the Minister but only with the agreement of all landowner(s) affected. The Order may contain such provisions as:

- a) definition of the extent of the Area, which could be physically marked off (including signage) on the ground;
- b) the time period during which the Order may apply;
- c) restrictions on entry into the Area or on activities within, which would apply for as long as the Order is in force.

Examples of an ASP might include:

- The breeding areas of migratory sea birds such as terns; for whilst these birds are known to be faithful to their breeding sites their actual nest sites may vary from year to year and may be no more than a scrape.
- A piece of hedgerow in which a protected wild plant species may grow only for a short period of the year.

These new provisions are contained in Article 38, Part 4 of the draft Wildlife Law.

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

An important element of wildlife legislation is the control of the possession and use of harmful devices and methods of taking or killing wildlife, whether they are protected or unprotected.

The Problem

The current provisions are generally unclear and inconsistent in referring to prohibited devices and the types of activities that are controlled.

For example, the Law prohibits the use of any 'net' to take or capture any protected wild animal or any wild bird. However, in practice a 'net' may be of any size or nature and may not necessarily be used in such a way that would cause harm to the animal or bird. Preventing the careful use of small nets for pond dipping or for butterfly surveys is difficult to justify in practice, where the animal is captured and released with no lasting harm. On the other hand, there is a need to control the use of a net to capture a bat since this requires special skills and should only be carried out by a competent person.

The Solution

The new Law establishes 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 allowed under specific circumstances (such as educational pond dipping) and this will be supported by published guidance.

Article 16 and associated Schedules 8 and 9 give full detail of the new provisions concerning regulated devices, substances and activities.

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

This section of the legislation regulates the release of animals, birds and plants into the wild so as to ensure that there are no adverse impacts on natural habitats and native flora and fauna.

The current Law prohibits the release of, or allowing to escape, into the wild:

- any animal or bird which is of a kind which is not ordinarily resident or a regular visitor to Jersey in a wild state; or
- pheasants and partridge; or
- any protected plant.

The Problems

Firstly, under the current legislation the release of an animal or bird that originates from outside of the Island, but is of a kind that lives in the wild locally, is not strictly an offence. For instance, a red squirrel originating from Scotland could be legally released. However, introductions such as these bring the risk of spreading disease to the Island's populations and needs to be regulated.

Secondly, the existing Law does not provide for the effective control of non-native 'invasive' animals, birds or plants that may already be established in the wild for whatever reason, but that need to be controlled or removed due to the risk of serious harm that such species can cause to the environment. This is particularly an issue where the species is found on privately-owned land, or where urgent action is required to prevent the spread, a recent example being the Asian hornet.

Jersey is committed to take action to prevent the introduction and spread of invasive non-native species (known as 'INNS') on an international, European and local level.

Solutions

1. Under the new Law, the release of any animal, bird or plant into the wild is prohibited unless it is in accordance with a licence granted to do so, or unless it is an animal, bird or

plant that is listed on a new Schedule to the Law. Animals listed on this Schedule will include the house mouse for example, which may be captured, but subsequently released without committing an offence.

2. Secondly, new provisions provide investigation and enforcement powers to enable the control or eradication of certain invasive non-native species that are listed on a new Schedule to the Law. These powers will enable authorised officers to investigate and where appropriate take action to control INNS, provided that this is following a specific procedure that is outlined within the Law. This requires that in the first instance cooperative action with the landowner should be sought in the form of a Species Control Agreement. However, if agreement cannot be reached, or if urgent action is required, the Minister may issue a Species Control Order, requiring positive action by the landowner or permitting the authorised officer to carry out the control.

The new provisions regulating the release of animals, birds and plants into the wild are fully described in Part 4 (Protection of Environment and Biodiversity) of the draft Wildlife Law.

7. Licences

Licensing provisions within the legislation allow for certain activities that would otherwise be illegal, to be permitted, but provided that they are carried out in accordance with the terms and conditions of a licence. For example, an ecologist carrying out a survey of small mammals on a site might need to capture protected animals for identification and subsequent release, thereby disturbing the animals, so will require a licence to do so. The law also states certain criteria with which all licences must comply, this includes meeting specific purposes, such as education and research, or for health and safety reasons.

The Problem

The current licensing provisions are generally both out of date and insufficiently flexible to be able to effectively regulate modern day activities that impact on protected wildlife. Activities that cannot be effectively licensed include photography, use of drones and activities that are related to the development of land or property.

Solution

The licensing regime within the new Wildlife Law has been strengthened, updated and extended to ensure that present-day activities affecting wildlife may be regulated and enforced appropriately. For example, licence 'purposes' have been extended to allow for licences to be issued in connection with the keeping of wild birds for falconry displays. A more flexible administrative framework also includes provision for certain activities to be authorised under a general licence, for which individual applications may not be required. General licences will cover activities that have a low risk for protected wildlife, such as the

use of humane live traps but users will still be required to register and undertake to meet licence conditions.

Part 5 (Licences) of the new draft Wildlife Law covers all licensing provisions under the new law.