

DRAFT CONSERVATION OF WILDLIFE (JERSEY) LAW 199 (P.223/98): REPORT

**Presented to the States on 2nd March 1999
by the Planning and Environment Committee**



STATES OF JERSEY

STATES GREFFE

175

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REPORT

Purpose

The Law is to bring together all previous laws relating to the conservation of wildlife and to give legal protection to wild plants and animals that are rare or endangered. Damaging nests or dens (a den is special term defined within the Law) of protected animals is prohibited, as is the picking or destruction of protected plants. A scheme for the issuing of licences to allow things which are otherwise prohibited is included in the Law.

Provisions

Article 1 defines and explains terms and wording used in the Law.

Article 2 explains where to find the lists of protected wild birds, animals and specially protected wild birds. Specially protected wild birds are birds which are rare or endangered in Jersey.

Article 3 gives the Planning and Environment Committee power to make an order which lists protected wild plants.

Article 4 extends the application of the Law to the territorial waters of the Island.

Article 5 makes it an offence to -

- kill, injure or capture any protected wild bird or protected wild animal; or
- destroy or collect eggs of a protected wild bird.

It is *not* an offence if the person -

- has a licence issued by the Planning and Environment Committee; or
- is ringing birds or marking animals and is releasing them; or
- is authorized by another Law.

A person may not be found guilty if -

- (a) they can show the court that a wild animal or bird in their care was disabled; and
 - was not disabled by them; and
 - was taken solely so that it could be looked after and released when it was better;
- (b) they kill a disabled protected bird or animal and can show -
 - that the bird or animal was not disabled by them; and
 - there was no reasonable chance it would recover;
- (c) they can satisfy the court that -
 - the act was an incidental result of a lawful operation; and
 - the act could not reasonably have been avoided.

Article 6 makes it an offence to damage, destroy, take or obstruct access to a nest or den of a protected wild animal or protected wild bird while it is being built or used, even if the den or nest is empty at the time of the act.

This does not apply if -

- the person has a licence;

- the person can show that the act was the incidental result of a lawful operation and could not reasonably have been avoided;
- the act took place within a dwelling house.

Article 7 makes it an offence to sell any living or dead protected wild animal or wild bird. This includes anything to do with selling, including advertising. This also applies to any part of a protected wild animal or wild bird or eggs.

Article 8 - makes it an offence to keep any live protected wild animal or bird without a licence. It is also an offence to keep any part of anything derived from a protected wild animal or protected wild bird, including a blown egg of such a bird.

This does not apply if -

- the person has a licence;
- if the animal or bird was lawfully killed or taken.

Article 9 prohibits certain methods of killing wild birds, including the use of a -

- spring trap, hook or line, electrical device, poisonous or stupefying substance;
- net;
- baited board, birdlime or similar;
- bow or crossbow;
- explosive (not ammunition for a gun);
- automatic or semi-automatic weapon;
- shot gun with a barrel larger than 1¾ inches;
- illuminating device or night sight;
- artificial lighting or mirror;
- gas or smoke;
- decoy such as a sound recording, or live bird or animal which is tethered, maimed or blinded;
- mechanical vehicle for pursuing or killing.

It is a defence to show that any legal type of trap or poison was being used to kill wild animals in the interests of public health, forestry, farming, fisheries or nature conservation and all reasonable precautions were used to prevent injury to wild birds.

The Agriculture and Fisheries Committee may by order, with the agreement of the Planning and Environment Committee, add or subtract any method of killing wild birds to the prohibited list.

Article 10 makes provisions similar to Article 9 for killing or taking wild animals with the addition of the use of self-locking snares.

Article 11 makes it an offence to export any scheduled reptile or amphibian without a licence.

Article 12 makes it an offence to show, or allow to be shown, wild birds for competition without a licence.

Article 13 makes it an offence knowingly to pick, uproot, collect seed of or destroy any protected plant. This does not apply if the person has a licence, or can satisfy the court that their action was the incidental result of a lawful operation and could

not reasonably have been avoided.

Article 14 prohibits the sale etc. of protected plants without a licence.

Article 15 prohibits the release of any wild bird or animal which is not ordinarily resident in the Island without a licence. It also makes it an offence to plant or sow any wild plant which is prescribed by order of the Planning and Environment Committee. It is a defence to show that all due care was taken to avoid committing the offence.

Article 16 gives the Planning and Environment Committee power to grant licences. The licences may only be granted for the following -

- scientific research or educational purposes;
- attaching any identifying or tracking device to any wild bird or examining such a device;
- preserving public health or public or air safety;
- re-population of an area with, or the re-introduction into an area of, wild birds, including any breeding necessary for that purpose;
- conserving flora or fauna;
- preventing the spread of disease;
- protecting any zoological or botanical collection; or
- preventing serious damage to livestock, crops, vegetables, fruit, growing timber or fisheries.

The licences shall be granted for a specific period and may be general or specific, to a company or department, or individuals, and subject to specified conditions. The licences may be modified or revoked at any time by the Planning and Environment Committee. If a licence is to kill protected wild animals or wild birds it shall specify how they are to be killed and the area within which they can be killed. A fee may be charged for the licence.

Article 17 makes it an offence to make a false statement in order to obtain a licence.

Article 18 outlines the way that the law will be enforced. A police officer or an officer authorized by the Planning and Environment Committee or the Agriculture and Fisheries Committee will apply to the Bailiff for a warrant enabling him to enter any land and examine any animal, bird or plant, the area where it nests, roosts or grows, or anything which may have been used in connection with the offence. The officer may seize and keep safely any animal or bird and may seize anything used in connection with the offence if there is good reason to believe that an offence is being committed.

Article 19 makes it an offence to attempt to commit, or to aid and abet the commission of, an offence, or to possess anything which may be used to commit an offence.

Article 20 provides that if an offence concerns more than one egg, bird or animal, the maximum fine that can be imposed shall be determined as if the defendant was convicted of an offence in respect of each item.

Article 21 provides that the court can order the forfeiture of any animal, bird, nest, egg, vehicle, weapon or other thing used in connection with the offence.

Article 22 identifies the way that papers connected with the offence can be served on the defendant.

Article 23 allows the Planning and Environment Committee to amend any of the Schedules.

Articles 24, 25 and 26 deal with the provisions for the subordinate legislation, the repeal of the 1947 Law and parts of the 1963 Law, and the short title.

Administrative issues

- For the purposes of reviewing species which are to be protected under the Law, it is proposed that an Advisory

Group will be established comprising one officer from the Committee's Environmental Services Unit (E.S.U.), one officer from the Agriculture and Fisheries Department, one member from the Société Jersiaise and an independent member from a relevant discipline nominated by the Planning and Environment Committee. The Advisory Group will consider the conservation status of candidate species and make recommendations to the Planning and Environment Committee. The Planning and Environment Committee can then make an order under Article 3.

- For the issuing of licences, the Committee intend to delegate authority to a suitably qualified officer of the States.