

19-21 Broad Street | St Helier
Jersey | JE2 4WE

Connétable Mike Jackson
Chairman
EH&I Scrutiny Panel
BY EMAIL

05 February 2021

Dear Mike

Re: [Draft Wildlife \(Jersey\) Law 202- \(P.110/2020\): Comments](#)

I am writing in regard to the Panel's comments presented to the States on 29 January 2021 in relation to the Draft Wildlife (Jersey) Law 202- (the 'draft Law').

Firstly, may I thank the Panel for undertaking a review of the draft Law which has resulted, I believe, in positive amendments since its initial lodging.

I am pleased that the representatives of our Island's farming community are now in agreement with the points that they have raised as part of your review, particularly how the annual Branchage and practises that they undertake interact with the draft Law. This is detailed in the first piece of guidance that my officers have produced which I have included as an appendix.

Furthermore, I am glad to see the support that stakeholders have expressed during your review and that the Panel itself has shown support by ensuring that the draft Law is properly understood by all stakeholders and that adequate resources are available to support the draft Law, if adopted.

Please see the following comments in response to each of the Panel's recommendations outlined within the comment to P.110/2020.

Recommendation one: *An internal review should take place as to whether the Natural Environment team is functioning with a sufficient level of expertise. This review should be undertaken in consultation with staff. The Minister for the Environment, in collaboration with the Director General for IHE should produce a report to the Panel before the end of Q4 2021, outlining the findings of the review and, if appropriate, any necessary next steps.*

Agreed - it is absolutely vital that our Island's environment is protected and enhanced and that the benefits it delivers is maximised through a properly structured and resourced team. I look forward to sharing the report of the internal review with the Panel.

Recommendation two: *Consideration should be given to a range of different methods to publicise and educate the public on the new Law if adopted. This should include what homeowners need to know in relation to protected species and habitats within their homes (e.g. bats). Consideration should also be given to setting aside funding for new/enhanced signage in areas of known habitats/nesting sites of protected species. The Panel would ask the Minister for the Environment to outline what the communications strategy will be in relation to this during, or prior to, the States debate on the draft Law.*

Agreed - This is linked to the practical guidance notes for all potentially affected businesses and homeowners that will be produced and published under Article 53 prior to when the law comes into force. The strategy is to produce four Tiers of guidance. Tier 1 guidance defines definitions of the law such as disturbance and reckless behaviour for each species group (Inc. birds, bats, amphibians/reptiles, marine species and invertebrates). Tier 2 guidance provides bespoke information drawing upon the key points on legal interpretation and outlining the best practice approaches that should be taken to avoid committing an offence. This easy to read information will be targeted to key stakeholder groups (inc. tree surgeons, landscape gardens, landowners etc). Tier 3 guidance details certain elements of the law, for example setting up an Area of Special Protection etc. Tier 4 guidance translates the Tier 2 leaflets into stickers/booklets etc highlighting key messages for easy reference (for example tractor/lorry cab stickers etc). These guidance documents will be fully consulted on with appropriate persons and be communicated through a strategy designed by the Government Communication's Unit (involving all appropriate outreach methods- ECOACTIVE, social media, stakeholder magazines, talks etc).

Recommendation three: *Consideration should be given to the methods used to serve a notice or document under the legislation on any member of the public. Registered mail may ensure the timely delivery of the notices and inhibit the accidental breach of the allocated response time. This should be considered prior to the adoption of the draft Law.*

Agreed - This is detailed in Article 48- Service of Notices in the draft Wildlife (Jersey) Law 202- and Article 7 of the Interpretation (Jersey) Law 1954 which defines what is meant by service of notice. Officers usually deliver notices by hand and ensure they are signed for (Article 28 (2)).

Recommendation four: *The draft guidance which is proposed to accompany the draft Law should be made available to the Panel and States Members to review prior to the debate on the draft Law, given that the guidance is fundamental to its practical implementation. In addition, the Minister for the Environment should ensure that accompanying guidance which is pertinent to the application of any future draft Law, should be presented to Scrutiny to review, prior to lodging.*

Partially agree- The draft guidance for Hedgerow Management has been agreed by representatives of the Island's farming community and is made available to the Panel prior to the debate. Article 51 (3) requires that the Minister must consult with such persons as appear to the Minister to be appropriate and this guidance is currently being consulted on more widely. Other guidance will be available prior to enactment of the Law. This is currently being worked on and will be made available to the Panel. As stated above, this will include consultation with all appropriate persons so that their views can be considered. Producing all guidance prior to the law debate will result in delay and the consultation process will ensure that the views of all appropriate stakeholders are considered.

Recommendation five: *The Minister for the Environment should seek to implement a more proactive public consultation process to ensure all stakeholders' concerns are adequately addressed prior to the States debate of any future draft Law, so as to seek to ensure a more efficient process of addressing any concerns, at an early stage, is attainable.*

Agreed – no further comments.

Minister for the Environment



Once again, thank you for your review and my Assistant Minister, Deputy Guida, and I hope that we can receive your support during the debate next Tuesday, 9 February 2021.

Yours sincerely

A handwritten signature in blue ink that reads "John Young".

Deputy John Young
Minister for the Environment

D +44 (0)1534 440540

E j.young@gov.je

Hedgerow Management Guidelines

(Draft for consultation 21.1.21)

Introduction

Hedgerows, fosses, banques, and dry-stone walls are important and characterful features of Jersey's countryside. Many were originally established for agricultural purposes, to provide field windbreaks and to contain livestock, and fulfill important functions in preventing soil erosion and water run-off. They are also extremely valuable as habitats in their own right, being rich in plant diversity, providing shelter, foraging and nesting opportunities and connecting separate habitat areas to allow the movement and dispersal of wild animals, birds and insects.

These features need to be maintained regularly, to ensure their longevity and to prevent encroachment on roadside banks. However, many of the wildlife species that hedgerows support are protected under the Wildlife (Jersey) Law 202- (the Wildlife Law). Their potential presence needs to be considered when carrying out maintenance work, including the taking of reasonable precautions to avoid causing harm or disturbance.

This guidance on hedgerow management forms a series of guidance documents issued by the Minister for the Environment according to Article 51(3) of the Wildlife Law. Prior to issuing this guidance, officers from Infrastructure, Housing and Environment (IHE) have consulted with appropriate persons, in accordance with the article.

The purpose of the guidance is to provide practical information to those who manage hedgerows, hedge-banks and dry-stone walls with the aim of minimising impacts on wildlife. For roadside bank and hedgerow work, a further useful reference is the Advisory Booklet (2019) on Banque, Hedgerow and Tree Management issued by the Branchage Action Group¹

Compliance with this guidance document will constitute a defence of 'due diligence' in circumstances that may otherwise amount to an offence under the Law.

Legislative Context

Wildlife (Jersey) Law 202-

The Wildlife Law - is the primary legislation in Jersey which provides for the conservation and protection of wildlife, and particularly the wild animals, birds and plants that are listed in the Schedules to the Law.

Under the Wildlife Law it is an offence for anyone, with certain exceptions, to 'deliberately or recklessly' cause harm to protected species or to their nests or dens. A number of wild plants are equally protected from being cut, uprooted, destroyed or disturbed.

¹ ['Banque, Hedgerow and Tree Management' Branchage Action Group](#)

The presence or potential presence of protected wildlife does not mean that activities such as regular maintenance or strimming of a hedgerow cannot take place, for example under the bi-annual branchage. It is however important to consider the requirements of the Wildlife Law, and whilst it is not always possible or practical to detect or confirm the presence of wildlife, the aim should be to reduce the risks by taking reasonable precautions in advance of the proposed works.

For clarity, it is not an offence under the law if 'accidental' harm has been caused by someone who has recognised and taken into account the risks and then taken reasonable precautions against causing harm. Rather, it covers 'deliberate' actions in which someone has weighed the risks, has concluded that there is a 'serious risk' of harm prohibited by the Law occurring, and then, despite their awareness of that serious risk, has proceeded to act in a way which actually causes harm.

It is the responsibility of the person responsible for the action to be able to record and demonstrate that all reasonable steps were taken to avoid committing the offence. Land Resource Management are available to offer advice regarding the steps that can be taken if required (tel: 441600).

In some cases, where there is no other solution available, a license may be issued under the Law to allow for an activity that would otherwise be illegal to be undertaken, such as the disturbance of an occupied bird nest within a tree that poses a threat to public safety.

Key Steps:

Anyone proposing to carry out works affecting a hedgerow should take the following reasonable precautions and should keep record of having taken these steps for future reference.

1. Timing of works

Sensitive timing of these operations can be critical in seeking to avoid causing harm to wildlife whilst at the same time helping to maintain a diverse vegetation type and structure that is beneficial.

- The main season where wild birds and other species such as squirrels and bats' dependent offspring rely on a den or nest, is broadly between March and September and it is generally recommended that heavy vegetation works (tree or hedge cutting) should be carried outside of this period, in order to minimise disturbance at this sensitive time. This will also help to maintain a thicker base cover of vegetation to benefit wildlife and to help to stabilize the banks.
- If banks are cut too early, smaller annual plants will not be able to set seed and vigorous perennial plants will thrive; these are often harder to cut and may not provide the flowers which make our banks so attractive and beneficial to wildlife. If it is necessary to cut early to remove lush growth, the aim should be to cut the lower few feet of the bank, which will leave the roads clear but allow plants further up the bank to continue to grow and flower.
- For roadside bank and hedgerow maintenance in compliance with the Loi (1914) sur la Voirie ('the Branchage Law') further information regarding appropriate timing of works is given in the Advisory Booklet (2019) on Banque, Hedgerow and Tree Management issued by the Branchage Action Group.

2. Severity of Cut

On roadside banks there is a requirement under the Branchage Law to ensure that vegetation is cut to a minimum clearance of 8 feet (2.4m) above public footpaths and 12 feet (3.7m) above roads. Provided that these requirements are met it may be possible to reduce the number of cuts to the hedge, or even to cut only a part of the hedgerow each year.

- When carrying out the early summer cut to comply with the Branchage Law it should usually be possible to leave the tops and inner sides of banks uncut, unless these are causing an obstruction. The aim should be to keep work to a minimum, by trimming the leafier vegetation overhanging the road and ideally leaving the vegetation at a minimum height of 10cm. A good hedge can still be achieved by allowing the tops and inner side of the hedge to grow. This can be cut every 2-3 years (in winter) and in doing so will create a good dense hedge, windbreak for livestock and covered in nuts and berries on the inner side.
- A light cut is often all that is needed at the base of a hedge to remove overhanging vegetation, By doing this, the risk of harming or disturbing wildlife is minimised whilst the thicker base cover of vegetation helps to stabilise the bank and reduce erosion.
- Over management or trimming a hedge too severely can have detrimental effects both on the stability of the bank and on wildlife therein, removing opportunities for cover and shelter. Taller, bushier hedgerows support a greater diversity of wildlife whilst helping to prevent soil erosion and bank collapse. Exposed soil encourages vigorous deep-rooted perennials like nettles, thistles and docks to grow more quickly and come to dominate, reducing diversity in plant species. These make the island's roadsides not only less attractive but also more difficult to manage.

The aim is to create an 'A' framed shape hedge.

3. Heavy Tree Works

- All heavy hedge and tree work should be carried out during the winter months between November and February in order to minimise disturbance of nesting birds and breeding mammals. It will also leave nuts and berries, which are a valuable food source for wildlife, on the trees for longer. Be aware of features, such as cracks, splits, loose bark and holes which could be bat roosts and are used year-round.

4. Pre-works Inspection

Whilst the main active season for most wild animals and wild birds is between March and September, in reality, wildlife could be present at any time of the year. A key precautionary measure in seeking to avoid harm is to establish procedures whereby:

1. Long sections of hedgerows – This applies to operators using a tractor and flail. It is recognised that undertaking a detailed survey is not always practical on long stretches of hedgerows. Operators should be aware of the potential for wildlife in hedgerows and trees but by adhering to the recommended cutting regimes, particularly during the early summer branchage, they should minimise any danger to plants and wildlife.
2. Smaller sections of hedgerow – This applies to all domestic premises and other operators using strimmers, hedge trimmers, sickles etc. A visual check of the hedgerow or trees to

be managed should be carried out to identify nests, dens or wildlife before commencing the works. Use of a booted foot, gloved hand rake or stick in the hedge to help to flush mobile species away from the site of the works. People should adhere to the recommended cutting regimes, particularly during the early summer branchage, as outlined above that will help protect wildlife.

In the event that wildlife is encountered

If at any time wildlife, or active nests or dens, are identified as present, works in the area should cease and further advice should be sought from the Land Resource Management Team or from a competent ecologist, before proceeding. If the cessation of works is impracticable for safety or other unavoidable reasons, animals or birds may be flushed gently away from the works area, using minimal handling with gloves if necessary. No attempt to handle bats or grass snakes should be made due to their rarity and sensitivity. In all cases a detailed record of the steps taken should be made and the Land Resource Management Team should be contacted as soon as possible. Where essential operations must proceed and avoidance of harm or disturbance to protected species cannot be prevented, a licence may need to be applied for.

Equipment

Whilst the use of modern machinery such as tractor flails is in many cases necessary and more efficient to manage larger sections of hedgerow, unless used appropriately these can be very destructive, both in causing harm to wildlife and in damaging the bank itself. Flails do not leave a 'clean cut' and can give rise to infection or disease. Where possible the flail should be lifted 10cm above the bank.

For smaller sections of hedgerow, the use of hand tools such as a chainsaw, lopper, or similar are preferred but should always be used with care to avoid harming small mammals such as hedgehogs.

Be careful not to damage newly planted or naturally regenerating young trees which may be hidden amongst taller vegetation.

Cuttings can be used to mulch around the base of tree trunks and shrubs but are not recommended to be spread over the bank as only the vigorous problem weeds will be able to grow through the mulch, suppressing annuals and less vigorous plants and losing the diversity of flowering plants.

5. Use of Chemicals

Whilst chemicals can help to knock back the vegetation on banks and at the base of the hedge, they also create a bare surface that is susceptible to erosion and bank destabilization. All plant life is lost, leaving no cover or food for animals or insects to utilize, as well as leaving the bank bare and unsightly. Only perennial plant species will regrow, which are in turn harder to manage and less diverse.

The use of glyphosate on road/pavement edges and the base of banks is not recommended. The pesticide is designed to be applied to vegetation and does not easily break down on hard surfaces. This can result in potential pollution during rain for some considerable time.

6. Rare and Protected Plant species

Grassy banks and hedgerows are known to support some uncommon or rare plants. Some are Biodiversity Action Plan (BAP) species, and have detailed conservation objectives written for them, whilst some are protected under the Wildlife Law. Sometimes the identification of these rarer and protected plant species can be difficult by sight only, and if in any doubt you should contact the Land Resource Management Team at Infrastructure, Housing and Environment for further advice. An identification booklet is also available to download here: [Protected Plant Booklet](#)

A more sensitive management approach may be required to avoid damaging these rare and protected plant species, for example areas can be marked off to ensure that they are not flailed during flowering time but can be cut later once they have set seed. The cut vegetation should then be removed.

Problem Species

Japanese Knotweed is an extremely invasive plant which can colonise most habitats including banks and roadside verges. It will quickly form a dense thicket through which very little else can grow, and with a vigorous underground spreading root system it is very difficult to remove. Even tiny pieces of cut plant material will quickly grow into new plants if not cut cleanly and disposed of properly; maintenance by mowing, strimming or flailing the plant may in fact result in its spread.

A separate management advisory booklet on the control and eradication of this plant is available from Infrastructure, Housing and Environment (search 'Japanese Knotweed' on www.gov.je) Please contact the Land Resource Management Team at Infrastructure, Housing and Environment for further advice.

Asian Hornet

Always be aware of the possible presence of Asian Hornets, which may be nesting in dense hedges or brambles, especially during the time of the second branchage.

Further information can be obtained here: [Asian Hornet sightings, identification and reporting in Jersey, UK](#)

Other relevant legislation

'Loi (1914) sur la Voirie'

The 'Branchage' Law (literally, 'Law (1914) on the Road') derives from an important one-hundred-year-old custom which ensures that our roads and lanes are kept clear of vegetation with enough room for vehicles and pedestrians to pass safely.

The Advisory Booklet (2019) on Banque, Hedgerow and Tree Management issued by the Branchage Action Group is a very useful guidance document that explains the law and importantly how it can be undertaken without harming wildlife.

If you are concerned about the presence of wildlife that may prevent you from undertaking your responsibilities under the Branchage Law, then please contact Land Resource Management.

Planning and Building (Jersey) Law 2002

The removal of any hedgerow, bank or other physical feature defining a boundary is considered to be development under the Planning and Building (Jersey) Law 2002 and requires a planning application.