

STATES OF JERSEY



DRAFT WILDLIFE (JERSEY) LAW 202- (P.110/2020): COMMENTS

**Presented to the States on 29th January 2021
by the Environment, Housing and Infrastructure Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

On 11th September 2020, [P.110/2020 – Draft Wildlife \(Jersey\) Law 202-](#) (hereafter referred to as the “draft Law”) was lodged in the States Assembly by the Minister for the Environment. The proposed new legislation, if adopted, would replace the current Conservation of Wildlife (Jersey) Law 2000 which is now considered outdated and inadequate due to increasing pressures on biodiversity worldwide such as habitat loss, climate change and the spread of invasive non-native species.

If approved, the proposed new legislation would ensure that Jersey meets current international standards and ensures compliance with its international responsibilities. Jersey is obligated to ensure its domestic legislation and policy is reviewed and updated regularly to ensure compliance with its international obligations. The draft Law will also introduce new provision to be able to control invasive non-native species and create a duty for public bodies to promote biodiversity in Jersey.¹

The Deputy of St Martin lodged an [amendment](#) to the draft Law on 21st October 2020, proposing changes to Article 8 (prohibitions relating to dens and nests, etc.) and Article 35 (designation of Areas of Special Protection) of the draft Law. The Minister for the Environment addressed the proposal in his [comments](#) and requested that States Members reject the amendments proposed by the Deputy of St Martin on the basis that the proposed amendment to Article 8 failed to comply with Jersey’s international obligations for the conservation of wildlife/biodiversity and would have a detrimental impact on Jersey’s protected and threatened animal and bird species. In relation to Article 35, the Deputy’s amendment seeks to amend the timescale for objections to be made in relation to the designation of an Area of Special Protection from 28 days to 3 months. The Minister noted in his comments that the prescribed timescale of 28 days would be sufficient and is the same timescale used in other similar site designation procedures, including the Site of Special Interest listing process under the Planning and Building (Jersey) Law 2002.

The proposition was scheduled for debate in the States Assembly on 3rd November 2020, where the principles of the draft Law were adopted in the first reading. However, due to growing concerns in relation to impact of various articles of the draft Law on Jersey’s farming industry, the Panel had the proposition referred to Scrutiny under Standing Order 72, and the debate on the second reading of the draft Law was deferred to 9th February 2021.

In a [letter](#) received from the Minister for the Environment on 8th January 2021, the Minister noted that the guidance to accompany the draft Law was still being developed.² The accompanying guidance would be fundamental to ensuring the draft Law would be clear and practical for users to implement. Therefore, the Panel wrote to the Minister on 13th January 2021 requesting, if all the guidance would not be available prior to 9th February, that the debate on the draft Law be postponed until such time the guidance would be available to States Members to review. The Panel received a response from the Minister on 22nd January 2021, stating it was not possible to provide all the guidance in time for the debate for the following reasons:

¹ [P.110/2020](#)

² [Minister for the Environment – Letter – 8th January 2021](#)

1. *The list of guidance documents is numerous and extends from bats, marine species through to birds and invertebrates. Producing these prior to the debate would delay this much needed law and our ability to protect the island's wildlife by at least 12 months.*
2. *It would not be beneficial to fast track the guidance in that a detailed process is already underway and it is important to provide enough time for proper consultation with stakeholders etc., as required by the Law, and critically the sequential publication of Tier 1 to 4 guidance as outlined in my previous letter.*
3. *Art 51 (1) states that the Minister may from time to time issue guidance. There is no requirement under the draft law for these to be issued at the time of debate or indeed at all. Guidance under the law is usually issued through a Ministerial Decision and does not usually form part of any paperwork accompanying the debate of principal legislation.*
4. *The Law allows for the Minister to amend or revoke guidance at any time being that guidance will change given best practise and pressures on our wildlife. Thus, the guidance that could be made available to States Members could become quickly outdated.*
5. *The Law requires that the Minister must consult with such persons as appear to the Minister to be appropriate. The views of such persons will take place then.*
6. *Guidance is not in itself legally binding. Compliance with the guidance however will constitute a defence of 'due diligence' in circumstances that may otherwise amount to an offence under the Law.³*

Instead the Minister has proposed that all Tier 1 guidance and priority Tier 2 guidance would be finalised by the time the law is enacted, which is expected to be in August 2021.

The Panel is pleased to note that the Minister lodged an amendment to the draft Law on 20th January 2021 to provide clarity in relation to Article 1(3) (interpretation) of the Law and to amend Schedule 1 to modify the protected status of two invertebrate species.

Panel briefings / hearings

The Panel was first briefed on the proposed draft Law on 16th October 2018 by Officers from the Department for Infrastructure, Housing and Environment (IHE).

However, the need for urgent legislation in relation to Brexit caused an unexpected delay to the drafting of the new Law.⁴ The Panel continued to press the Minister for progress updates during Quarterly Hearings throughout 2019 and early 2020.

³ [Minister for the Environment – Letter- 22 January 2021](#)

⁴ [Minister for the Environment - Response to written questions – 1st November 2019](#)

A further briefing on the draft Law was held with the Panel on 3rd March 2020. Subsequently, the Panel was advised of several minor amendments that had been made before the final version of the draft Law would be lodged *au Greffe*. After reviewing the list of minor amendments, the Panel was satisfied that they were non-controversial and therefore a further briefing was not required at that time.

However, in light of other emerging concerns in late August 2020 from Jersey's farming industry, the Panel corresponded further with the Minister for the Environment and enquired whether provisions would be made within the draft Law to allay the industry's concerns or to provide adequate safeguards.⁵

Public Consultation

A Government-led public consultation on the draft Law was held in late 2018. The consultation generated a total of 68 responses, including from organisations such as ecological consultants, charitable bodies, academics, wildlife survey volunteers and individuals with a personal interest on the topic.⁶

In March 2019 the Government produced a consultation response [report](#) summarising the responses received to the public consultation and a response from Government addressing each of the key themes raised. Omitted from this report were concerns highlighted by the Jersey Farmers' Union (JFU) to the IHE Department during the consultation.

During a meeting with the president of the JFU on 29th October 2020, the President confirmed it had raised concerns regarding the draft Law during the Government public consultation and had understood that a further consultation would take place prior to the final draft being lodged. This had not transpired by the time the draft legislation was lodged in September 2020.⁷

Concerns of Jersey's Farming Industry - JFU and RJA&HS

Within a joint written [submission](#) from the JFU and Royal Jersey Agricultural and Horticultural Society (RJA&HS), the farming industry's concerns were raised.⁸ Subsequently, the Panel met with the JFU and the RJA&HS on 29th October 2020 to discuss the industry's concerns further.

Within their submission, the JFU and RJA&HS noted they both shared concerns with a number of Articles within the draft Law and that clarification was required to ascertain whether normal agricultural activities could be considered in breach of it. Concerns of the JFU and RJA&HS included:

- The extent to which statutory activities, such as Branchage, could lead to a breach of Articles 7 through to 13;

⁵ [Minister for the Environment – Letter – 23rd December 2020](#)

⁶ [Draft Wildlife \(Jersey\) Law 202- Consultation Response Report](#)

⁷ [Environment, Housing and Infrastructure Scrutiny Panel – Minutes – 29th October 2020](#)

⁸ [Submission – JFU and RJA&HS – 9th October 2020](#)

- The extent to which cultivations of land left fallow for a period could lead to a breach of Article 21;
- The extent to which Article 35 for the designation of Areas of Special Protection could be applied to agricultural land;
- A confusion between Schedule 9 and Schedule 10 regarding the use of Larsen or Ladder traps.⁹

It was also observed that penalty provisions for offences committed under the draft Law were shown as maximum penalties, the level of which was of particular concern. It was noted that further guidance was anticipated to supplement the draft Law to provide clarity as to how various aspects would work in practice, however, had not yet been received.¹⁰ Within their submission, the JFU and RJA&HS questioned whether the guidance as to the application of the provisions of the draft Law should be made available to Scrutiny prior to the adoption of the draft Law.¹¹

Regarding Article 35, it was observed that no detail had been included as to what compensation might be afforded to the landowner if an area of agricultural land was designated as an Area of Special Protection.¹²

During a Panel meeting on 8th December 2021, the Panel ascertained that reassurance was required regarding any potential conflict between the Jersey Branchage legal obligations and the draft Law. Additionally, reassurance of the safeguards that would be available to the farming industry to undertake their business as usual activities without breaching the draft Law were required. The Panel highlighted further concerns regarding the potential for any guidelines issued by the IHE Department, which offered safeguards to the farming industry, to be changed in the future by newly appointed Ministers.¹³

On 8th December 2020, the Panel met in private with the HM Attorney General, Mark Temple QC, and a Legal Adviser from the Law Officers' Department to discuss concerns of the farming industry in relation to the draft Law.¹⁴

In a [letter](#) to the Minister for the Environment on 23rd December 2020, the Panel sought further clarification in relation to the work being undertaken to allay the farming industry's concerns and to provide adequate safeguards for the industry. The Panel, also, pursued confirmation regarding the timeline for finalising the guidance that would accompany the draft Law. Moreover, the Panel enquired whether explicit exemption would be provided in the draft Law relating to the legal requirements of the annual Branchage.¹⁵

In response, the Minister for the Environment informed the Panel that the Assistant Minister for the Environment and Officers from Natural Environment had met with representatives of the farming industry and it was hoped that many of their concerns had been allayed. In addition, to ensure all concerns had been discussed and allayed, a

⁹ [Submission – JFU and RJA&HS – 9th October 2020](#)

¹⁰ [Environment, Housing and Infrastructure Scrutiny Panel – Minutes – 29th October 2020](#)

¹¹ [Submission – JFU and RJA&HS – 9th October 2020](#)

¹² [Environment, Housing and Infrastructure Scrutiny Panel – Minutes – 29th October 2020](#)

¹³ [Environment, Housing and Infrastructure Scrutiny Panel – Minutes – 8th December 2020](#)

¹⁴ [Environment, Housing and Infrastructure Scrutiny Panel – Minutes – 8th December 2020](#)

¹⁵ [Minister for the Environment – Letter – 23rd December 2020](#)

further meeting would be held prior to the debate of the draft Law with representatives of the farming industry.¹⁶

Addressing the farming industry's concerns in relation to being found potentially liable for prosecution according to the Law whilst undertaking their daily activities, as well as concerns in relation to prosecution through the Court and the accompanying fines that were listed in the draft Law as the maximum penalty; the Minister explained that enforcement action would, in many cases and where appropriate, start with issuing advice. Furthermore, that potential Court prosecutions were for serious acts and needed to comply with the strict triggers, as detailed by the Attorney General's (AG's) Guidance. The Minister continued to explain that any case file prepared by his Officers would further be reviewed by the AG's Office to satisfy both the various evidential and public interest tests.¹⁷

In relation to the farming industry's concern that the guidance accompanying the Law could be changed by a Minister in the future it was explained that triggers and safeguards would inhibit this.¹⁸

In his [letter](#) dated the 8th January 2021, The Minister for the Environment outlined further measures that were being undertaken to address the farming industry's concerns as follows:

- An amendment to the draft Law would be submitted to better clarify the wording of Article 1 (3) C which the farming industry had viewed as unclear.
- Regarding Branchage, guidance in relation to this aspect would be given priority and included all landowners and users as well as farmers.

Within the Minister's letter, he confirmed it was anticipated that a draft of the guidance, agreed by the farming industry and other land users, would be available by 9th February.¹⁹ As at the time of writing, the Panel notes from email correspondence that the farming industry has been in close discussion with the Assistant Minister for the Environment in relation to the draft guidelines and that they were awaiting a revised version of the guidelines based on the feedback provided.

The Panel considered whether there might be industries, other than agricultural and farming, who might be affected by any of the provisions contained in the draft Law. It was noted that the building industry might have similar concerns. In this regard, the Panel wrote to industry representatives requesting their views on 14th January 2021. As at the time of writing, no concerns have been raised in response, although the Panel notes that this could be a result of the compressed timeframe.

¹⁶ [Minister for the Environment – Letter – 8th January 2021](#)

¹⁷ [Minister for the Environment – Letter – 8th January 2021](#)

¹⁸ [Minister for the Environment – Letter – 8th January 2021](#)

¹⁹ [Minister for the Environment – Letter – 8th January 2021](#)

Jersey Ramsar Management Authority

In October 2019, the Panel was approached, in writing, by the Jersey Ramsar Management Authority (RMA) who expressed concerns about the protracted delay in lodging of the draft Law.²⁰

The submission explained that the RMA has responsibility to implement a management framework for the conservation of Jersey's marine environment designated as wetlands of international importance across the four Ramsar sites of Les Écréhous, Les Minquiers, the Paternosters and the South East Coast.

It further went on to explain that the proposed draft Law would be welcomed by RMA as it would "significantly improve the ability to appropriately manage and police such sensitive areas of outstanding natural beauty and biodiversity, and allow for more effective and efficient regulation of activity affecting local wildlife and their habitats." It was stressed that the current level of legislation in Jersey is inadequate, particularly in regard to protection of marine species and habitats.

*"The delay in finalising the draft Law is of grave concern, as Jersey's Ramsar's sites and wider marine and wetland habitats are already experiencing high levels of activity, and consequently the associated risk of disturbance or damage, without the ability to control it."*²¹

The submission made by RMA reinforces the assertion in P.110/2020 that the current Law is outdated and that there is a requirement for new legislation to be able to meet international standards and to enable effective regulation and enforcement measures.

Société Jersiaise - Botany Section

In January 2021, the Panel received a submission from the Botany Section of the Société Jersiaise in which it explained that its members had a role in monitoring and recording Jersey's rich botanical flora.²²

It was the Société's intention to address concerns that had been raised within the JFU and RJA&HS's submission regarding wild plants on agricultural land. They highlighted that wildflowers that had emerged after a field was left fallow were agricultural weeds that would thrive in agricultural conditions where land was frequently disturbed. In addition, that continuing cultivation would be of benefit to the wildflowers. Regarding the seed provided by wildflower seed mixes, it was explained that this would never include plants that would be considered as valuable and botanists would not wish to protect them.

It was emphasised that greater protection of Jersey's wildlife was urgently needed, highlighting that developments were taking place that damaged Jersey's wildlife and adequate protection was not in place to deter developers.

²⁰ [Submission – Ramsar Management Authority – 11 October 2019](#)

²¹ [Submission – Ramsar Management Authority – 11 October 2019](#)

²² [Submission - Societe Jersiaise Botany Section – 15th January 2021](#)

The Société noted that the plants to be protected under the draft Law were rare and significant. Moreover, that Jersey had signed up to the Conservation of Biological Diversity, so every effort was required to protect rare plants.

The submission made by the Société Jersiaise Botany Section supports the assertion in P.110/2020 that the current Law is outdated and that there is a requirement for new legislation to be able to meet international standards and to enable effective regulation and enforcement measures. Additionally, it could possibly allay the concerns of the JFU and RJA&HS regarding the extent to which cultivations of land left fallow for a period could lead to a breach of Article 21 of the draft Law.²³

Bats: protected species and habitation within households

In a public Quarterly Hearing held in June 2020, the Panel raised initial concerns about homeowners potentially not being able to remove bat roosts located within their homes.

The Assistant Minister for the Environment clarified that provision was made within the draft Law to enable homeowners to remove them from living areas within the home, however it was emphasised that bats generally roost in roofs and attics and therefore enforcement of the draft Law for non-removal of a habitat applied only to this area of a home or building:

Assistant Minister for the Environment:

.... I think there has been a misunderstanding because there is a change in wording between the 2000 law and the new draft. This change in wording is not a new policy, it is a typo in the original law. The only protection that we can give bats is to make sure that they can live in roofs and attics, that is where they live in Jersey. They also have roosts in trees at certain periods but they mostly live in roofs and attics so if we want to protect them at all that is how we protect them. We allow for removal of bats that are in the living area of a dwelling and that is what was meant in the 2000 law because of an error it just happened to not be there in the actual article. So the intent has not changed within 2000; we are protecting bats in their habitat which is roofs and attics.²⁴

Staff resources, expertise and manpower

In a Quarterly Hearing held with the Minister for the Environment in December 2019, it was noted that the factors contributing to the delay in the lodging of the draft Law were Brexit and the drafting of the revised Public Finances Law. The Panel was advised that the process had been further impacted by the loss of a key member of the Natural Environment team who was leading on the draft Law.

It was explained to the Panel that the Principal Ecologist had left the Government of Jersey and that whilst the IHE Department would retain ecologists, his management post would not be replaced:

²³ [Submission – JFU and RJA&HS – 9th October 2020](#)

²⁴ [Public Quarterly Hearing with the Minister for the Environment, 9th June 2020, p.22](#)

Group Director for Regulation:

Yes, so his post directly will not be replaced but there is a restructuring in the natural environment team which will ensure they still have ecology expertise within the team. So there is a restructure within that area around countryside and natural environment so while his post specifically will come out, his management post, we still retain ecologists ...

Deputy K.F. Morel:

Minister, how confident are you that expertise will be retained at the level that is required?

The Minister for the Environment:

The answer is: I am not confident at the moment. I was very disappointed and I would like to put on record the outstanding work that John Pinel has done throughout his career. I worked with him in the 1980s. I think he came to us from a teaching background and he has done dedicated work, well above and beyond, and he will be a very serious loss to the Island. I wish him well in his future career. I think he has come to the view, I think, that the States of Jersey has changed ... and I do not want to say things that would not be right, but I would have loved to have retained John, but it was not to be.

The Connétable of St. Brelade:

I would condone everything you say, Minister. What does concern me, and perhaps you could tell the panel, how many are there in the national environment team?

The Minister for the Environment:

I do not know. Not enough.²⁵

The Panel was advised further on in the hearing that the Natural Environment team has 11 Full-Time Equivalent staff relating to the ranger service and ecologists.²⁶ The Panel shares concerns with the Minister that the IHE Department has lost significant expertise in this area and questions the decision to remove this senior post given the increasing pressures globally and on local, native wildlife in Jersey.

The Panel notes that although the proposed draft Law increases provision for penalties and enforcement of the Law, the report contained within P.110/2020 specifies that enforcement and regulation of this Law will sit with the Regulation section of IHE, in order to keep “advisory/science and regulatory aspects separate.”²⁷

Service of Notices

Concern was raised regarding how Notices under the draft Law would be served on any person. The Panel discussed whether further methods for delivery should be considered, such as registered mail. This would ensure that Notices did not go unnoticed and the response time accidentally breached.²⁸

²⁵ [Public Quarterly Hearing with the Minister for the Environment, 17th December 2019, p. 47](#)

²⁶ [Public Quarterly Hearing with the Minister for the Environment, 17th December 2019, p. 49](#)

²⁷ [P.110/2020](#)

²⁸ [Environment, Housing and Infrastructure Scrutiny Panel – Minutes – 8th December 2020](#)

Further evidence considered

The Panel also received email communication from a member of the public and former Principal Ecologist for the Government of Jersey, Mr John Pinel. Mr. Pinel urges support for the draft Law in order for Jersey to adequately address declines in various species of wild birds, insects, reptiles and amphibians. In addition, to protect marine life, such as dolphin and seal populations and to address and reduce the impact of non-native invasive species.

In his [submission](#), Mr. Pinel offers his views of how some articles of the draft Law would work in practice, providing some context as to how these articles might be applied at an operational level.²⁹

Recommendations

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.

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.

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.

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.

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

²⁹ [Submission – John Pinel](#)

ensure a more efficient process of addressing any concerns, at an early stage, is attainable.

Conclusion

It is evident that timely effort is required to preserve and protect Jersey's wildlife and biodiversity and that the current legislation is not adequate to achieve the required level of protection.

Considering the evidence received, we are very mindful of the need to balance the environmental benefits in terms of preserving and protecting Jersey's wildlife whilst ensuring the legislation is clear and pragmatic in terms of its application for the general public, as well as Jersey's farming and other industries. Pertinent to achieving that balance is the importance of satisfactory guidance to accompany the draft Law. Particularly, as the guidance is fundamental to the practical implementation of the draft Law and is required to allay concerns of the farming industry. In addition, the importance of an education drive to inform Jersey residents of their obligations regarding the draft Law.

To date, we have not had sight of the guidance and, although the Minister for the Environment had anticipated it would be available for the debate of the draft Law on 9th February, this still leaves insufficient time to review it. It is our view that the guidance should have been provided at the time of lodging the draft Law. Considering the significance of the guidance in relation to the application of the draft Law, our view on whether to support the draft Law would be heavily reliant upon the guidance accompanying it being satisfactory. Should the States Assembly vote to adopt the draft Law, we will keep a watching brief on the practical application of the guidelines, and should any concerns arise we may seek to undertake a review of the guidelines at a future date.

The Panel welcomes the Minister's amendment lodged on the 20th January 2021 to clarify the wording of Article 1(3). Moreover, the IHE Department's continuing efforts to assist in allaying the farming industry's concerns.

We hope the above recommendations provide constructive feedback and helpful advice for further consideration by the Minister. We will formally request a response from the Minister as to whether the above recommendations are accepted and will publish the associated correspondence.