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Connétable Mike Jackson
Chairman
EH&I Scrutiny Panel
BY EMAIL

08 January 2021

Dear Mike

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

Thank you for your letter dated 23 December 2020 relating to the above draft law, and for providing me with the opportunity to reply to the points raised that largely relate to the submission made to your Panel by the Island's farming industry.

I am pleased to inform you that my Assistant Minister, Deputy Guida and officers from Natural Environment met with representatives of the farming industry and were able to answer their questions and hopefully allay many of their concerns. We have a further meeting planned prior to the States debate on 9 February to ensure that we have fully discussed and allayed all of their concerns.

Many of the concerns related to their members possibly finding themselves potentially liable for prosecution according to the law whilst undertaking their daily activities, for example during branchage.

Pertinent to this is that prosecution through the court and the accompanying fines is listed in the draft Law as the maximum penalty that is available. Enforcement action would, in many cases and where appropriate, start with issuing advice. Potential court prosecutions are also for serious acts and need to comply with the strict triggers as detailed in the Attorney General's (AG) Guidance (Notes for Officers of Regulatory Departments¹). Any case file prepared by my officers must further be reviewed by the AG's Office to satisfy both the various evidential and public interest tests.

Representatives of the farming community were concerned that a 'less understanding Minister' might cause a change to this current regulatory provision. The triggers and safeguard outlined demonstrate that this cannot be the case.

In answering the points raised in your letter;

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<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20GuidanceNotesRegDepts%2020171207%20ALC.pdf>

Amendments to the Law

The farming industry viewed the provisions of Article 1 (3) as unclear. These provisions form part of the definition of “deliberately” and confusion might arise if the separate paragraphs in this Article are read in isolation rather than as a whole.

The wording of Article 1 is clear in that it would not result in criminalising accidental harm by someone who has weighed the risks and taken reasonable precautions. Rather, it covers cases 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 such harm.

My Assistant Minister Gregory Guida has researched this area and because of the concerns of the industry will be submitting an amendment to the law to provide better clarity in the wording in Article 1 (3) C.

The publication of guidance

The Minister is not legally obliged to issue guidance under Article 51 of the draft Wildlife Law; however, I agree and support your opinion that clarification of certain key definitions, and how they should be interpreted in practice, will be needed. Article 51(3) of the draft Wildlife (Jersey) Law 202-, states that, “*Before issuing, amending, or revoking any guidance under this Article the Minister must consult such persons as appear to the Minister to be appropriate*”. This underlines my own views that whilst it is important that the guidance provides for the required protection, it is also necessary to ensure that it is also clear and practical for users to implement.

The timetable for these is set out below. The level 1 guidance is currently being developed and will be finalised prior to the law coming into force.

Level 1

Interpretation of key legal definitions, such as Articles 11 & 12 (breeding Sites and resting sites of certain wild animals and wild birds) and Article 13 (disturbance of wild animals and birds). This will be cross referenced to comparable legislation and associated published guidance in other jurisdictions and made appropriate for the unique context in our island.

Level 2

Practical advice for those individuals and businesses that carry out operations that can be affected by the presence of protected wildlife. This includes, but not limited to land managers (including branchage), tree surgeons, developers and homeowners.

Level 3

Procedural aspects of the Law, such as step by step guidance on the designation of Areas of Special Protection.

Level 4

Identification of key messages and the translation of these into easy to access formats for the operator. This could be in the form of tractor cab stickers, waterproof reference booklets or on-line maps that can be accessed by mobile telephones whilst working.

Requirements for Branchage

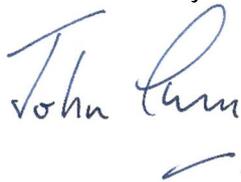
The concerns here related to the legal requirements for branchage and how this 'might' lead to a breach of Articles 7 through to 13 and Article 21. As outlined above, a person would not commit an offence under the draft Wildlife Law, if they can show that they have taken 'reasonable precautions' not to commit an offence.

This emphasises the need for guidance in which the term 'reasonable precautions' is defined and understood. Because of the concerns raised through the farmer's submission, I have requested that this particular guidance is given priority and includes all landowners and users as well as farmers.

Officers are in the process of reviewing the existing Branchage Guidelines and a further meeting will be held with JFU and RJA&HS to ensure that we are all in agreement prior to the February debate. It is proposed that the existing requirement in the current guidance that commercial branchage operators undertake detailed survey prior to cutting is omitted. This was the main concern of the farming community, being that it was impractical. Wildlife safeguards can otherwise be achieved through other guidance, such correct cutting of banks (such as leaving a length of vegetation (undertaking a light cut) and leaving major tree cutting etc to the autumn when nesting by birds is complete). As requested in your letter, it is anticipated that a draft of this guidance agreed by the farmers and other land users will be available by 9 February when the States debate the draft law.

I trust that this covers all points raised and please do not hesitate to contact me if you require further information.

Yours sincerely



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