

Notes on Draft Road Traffic (No 68 (Jersey) Regulations

The States are asked to decide whether they are of opinion-

To request the Ministers for Infrastructure and the Environment to consult on how cars could be given additional legal protection in the event of death or injury in a road traffic accident involving a motor vehicle, with the consultation to include consideration of the Road Traffic (Jersey) Law 1956, the Animal Welfare (Jersey) Law 2004 and other legislation as appropriate.

1. What is the obligation on a motorist if they hit an animal?

A52 Road Traffic Law 1956 lays out the duty of the driver of a vehicle in case of accident-

Where, owing to the presence of a vehicle on a road, an accident occurs whereby damage or injury is caused to any person, vehicle, animal or property....the driver of the vehicle shall stop and-

9(a)(iii) in injury is caused to any person or animal,

Shall immediately inform a police officer of the occurrence of the accident and shall not move the vehicle without the consent of a police officer.

(2) If any person fails to comply....liable...fine or imprisonment not exceeding 6 month or to both...

(3) In this Article, "animal" means any horse, cattle, ass, mule, sheep, pig, goat or dog.

2. Why were cats left out of the original list?

I would argue that there is a fundamental difference between cats and all the other animals on the list in that humans are responsible in the law for all of the listed ones. Dogs must be kept under control, licenced annually at the Parish Hall and must wear collars bearing the name of the owner. In addition, it is recommended that they are chipped. Failure in control or licencing can lead to criminal proceedings. The other animals are generally in the ownership and care of farmers, and there are husbandry laws and registers. They are generally in fields and I think

that there are offences in relation to allowing them to escape (though I have not checked).

Cats, however, own their humans, not the other way round. A cat which is not confined in a house is a free spirit and it is a proven fact that they can cover wide areas during their time outside. There was a TV documentary where GPS was attached to cats, and even ones which were urban travelled over great distances.

Cats are fairly small, and can be very quick and agile. They can climb trees, and jump from heights. They could therefore get into the road from many unexpected directions. All the other animals on the list, barring some dog breeds, would tend to be much larger, more visible, and slower moving.

There are also many feral cats, particularly in the countryside.

Frequently the only identifier of an animal seen at night is a glint of eyes, and so it would be difficult to tell whether it was a polecat, ferret, other small mammal, or a cat.

A huge number of cats are reported missing on a monthly basis, there are several sites on Facebook dedicated to missing felines. If an owner is desperate to find their pet, and cannot, it is clear that they do not have control of it.

Cats tend to be very lightweight, and a car driver may be unaware he has hit one, while colliding with a horse would put the car at a disadvantage!
THERE IS NO RESPONSIBILITY PUT ON THE OWNER OF A CAT TO KEEP IT UNDER CONTROL, TO HAVE A COLLAR WITH A NAME, OR ANY OTHER IDENTIFIER. THERE IS NO CENTRAL OR PARISH REGISTER OF CATS.

3. Should this be restricted to Motor Vehicles only?

A bike, electric scooter, skateboard or hoverboard would be able to do a lot of damage to a cat.

I have then looked at the proposed legislation. Please note that the provisions of A52(4)-(8) are NOT as laid out in the Highway Code, and differ from accidents involving other animals. I think that although it is necessary to differentiate, it may be very confusing to have different obligations.

So, A52(4) starts: *“If a driver of a motor vehicle reasonably believes that a cat has been struck...”*

What would constitute reasonable belief- and more importantly, what would constitute a reasonable excuse?

Saw cat, felt bump, saw prone cat on road- looks like reasonable belief

Saw cat, no bump, saw prone cat on road

Saw cat, felt bump, no prone cat on road, cat in hedgerow or across field

Saw cat, felt bump, no prone cat on road

Saw cat, no bump, no prone cat on road, cat in hedgerow or across field

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No cat, no bump, no prone cat, cat in hedgerow or across field

No cat, no bump, no prone cat.

So, the onus is on the driver to decide whether they reasonably believe that a cat has been struck and it will be a defence that they did not believe it had- but that belief has to be reasonably held, and if they did not formulate such a belief (which is a very high test), how is it to be judged? Will it be on the test that a reasonable person WITH THE SAME KNOWLEDGE would have come to the reasonable belief? How will it be proven that they had knowledge? Or will it be a test that they SHOULD have known that they hit the cat, even if they did not- that seems perverse as how could they then come to a reasonable belief? And if this does not make sense, it may not be judicable.

A52(4) continues: *“the cat has been struck owing to the presence of the vehicle on a road”*

So, the cat does not have to have been struck by the driver of this vehicle. It might have caused another to swerve, it might have been going slowly or

giving right of way, and another overtook, it might have been stopped and another (even potentially not a motor vehicle) passed it and hit the cat, but it could be deemed that the driver is somehow at fault.

Now *“the driver must-*

a) Stop the vehicle as soon as it is safe or reasonably practical to do so”

As soon as safe is easy to define. But “Or reasonably practical?- is that when the businessman gets to town? The mother has done the school run? The driver is safely home? Who is to decide what is reasonably practical? What is the test to be- remember that a principal of law is that it should be clear!

(b) Notify ..paragraph (5)

(5) (a) a person who is responsible for the cat”

Without any identifying ownership details on the cat, without any register, how is a person supposed to work out who is the owner of a cat which they may have only caught a glimpse of as it receded in their rear view mirror?

(5) (b) A person or body...A85

If A85 is to specify the JSPCA, why can it not be specified here? It would make it simpler. Bear in mind that you may have an anxious person who has a reasonable belief that they have just been the cause of hitting and possibly injuring a cat- is it reasonable to expect that they will be able to search around in the law from an Article which relates to what to do when they have had an accident to understand that they have to keep searching the law to find another Article some 30 paragraphs of law later- if the provision has been written into A85 as it is easy to change it should the nominated body change, then it would be as easy to change (5)(b).

A52 (4) (b) (the driver must notify) “(i) when the cat was struck and (ii) the location where the cat was last seen by the driver”

So the driver does not have to give their own details or where the accident took place, and it would appear that such details are not considered relevant as far as the law is concerned. However, it is an offence not to report the accident- it would seem that there is no defence that it was reported to the person thought to be responsible, but that person in fact was not. And there would probably be no evidence that it had been reported to the wrong person. The default position therefore would be for most people to report it to the

JSPCA. They would not know whether it was the driver or someone else who was reporting as there is no requirement to give a name or any details other than when the incident took place and where the person last saw the cat, which could for example be in their arms as they hand it to the JSPCA. It seems to me that apart from when the incident took place the most important issue is where it was. It is of secondary consideration where the cat was last seen if it was scampering away over the fields. Likewise, the issue that triggers the report is not that the cat has been injured but that it has been struck. If there is no injury is it reasonable to require a driver to report it on pain of a criminal conviction if they do not?

There is no requirement to describe the cat.

Although I will come back to the responsibility that is being imposed on the JSPCA, here I am concerned with the failure to report, and the difficulty in a driver showing that they have complied- there is no obligation to give the drivers details to the JSPCA or the responsible person, and there is no obligation on them to retain those details (of course). And there is no obligation on the driver to keep any record of a conversation or written report. So if at a later date there is a complaint from someone else, how is the driver to show that they have complied with the law?

A52(7) " If a person fails to comply with paragraph (4) that person commits an offence and is liable to a fine of level 3..."

Level 3 is a fine of up to £10,000. This is the maximum fine that can be imposed at the Magistrate's Court. I understand that the issue of injuring a cat is highly emotive, but is this fine- not for hitting the cat but for failing to report it- proportionate???? There is no provision for imprisonment.

A further issue is that the penalty provision would not have to be so clumsily worded (and this applies even more to A52(6)) if it was the paragraph which followed the instructions of what to do- A52(6) applies to A52 (1) and (3), A52(7) applies to A52(4). This, in my opinion, is bad drafting.

A52(8) "A person or body referred in paragraph (5)(b) who is notified of information under paragraph (4)" - remember that 5(b) refers you on to A85- "must (a) keep a record of when the cat was struck and when the cat was last seen".

This is not the information which the driver is obliged to give! The time of where the cat was struck is obligatory, and then the location, not the time it was last sighted!

The JSPCA is being obliged to keep a record. What format is this to be in? A list of the time but not place of an accident, plus the time/ or place where the cat was last seen, with no description of the cat or where the accident happened, would seem insufficient to identify the cat for a worried owner, or give a defence to the driver of having reported if their recollection of the time is not sufficiently close to the actual time of the accident if reported by someone else.

What will be the cost to the JSPCA of keeping such a record? Have they got to train someone in GDPR, and appoint a data controller? I know this seems extreme, but their remit, according to the Association of Jersey Charities, is to "Prevent cruelty, promote knowledge, and provide for the aged, sick, lost and unwanted animals in Jersey". I am not sure that retaining a register of accidents which does not identify an animal or its injury would strictly fall within their mission. Further, they have another obligation, which involves GDPR and also making a judgement call- they must

A52(8)(b) *"make that information available to any person who seems to have reasonable grounds for requiring the information."*

This goes back to reasonableness- really hard to define. Should it be restricted to a person purporting to be the owner?- it would seem reasonable to tell them that a cat of no description was last seen at such-and such a place or time, depending on whether the owner has complied with their obligation or the JSPCA has done so- having been involved in an accident at a particular time, but not where. It would seem that the JSPCA would have to guess whether this might or might not be the cat the owner is calling about. Presumably they would be able to disclose to the Police- but actually the police need to know that it has NOT been reported, because that is the offence. Would the Press have reasonable grounds? And the test is not that they HAVE reasonable grounds, but that they SEEM to have them.

Finally, A52 is one which cannot be dealt with at the Parish Hall summarily, despite what it says in the Report para 8.

In summary, a person commits an offence if they do not report as required that they have hit a cat. There are all sorts of reasons why they may not comply or they have a defence or there is an absurdity

- 1) They did not know
- 2) They did not reasonably believe
- 3) They reported it to the wrong person thinking it was the right person
- 4) They reported to the right person but the record was insufficient
- 5) They chose not to report it despite reasonably believing
- 6) The cat was not injured
- 7) They have not yet reached the reasonably practicable moment to notify

I think this will be unpolicable- we have to look for a failure to report by a driver, but it is often a witness who is the likely person to report having seen a cat being hit. We would then have to identify the vehicle and then the driver (the JSPCA or person responsible for the cat would not be able to do this).