

THE WILDLIFE TRUST OF ALDERNEY

GUIDANCE NOTE – DRAFTING THE WILDLIFE (ALDERNEY) LAW 2020

1. INTRODUCTION

- 1.1 This Guidance has been prepared by The Wildlife Trust of Alderney (the '**Wildlife Trust**'), in order to assist the States of Alderney (the '**States**') in drafting the Wildlife (Alderney) Law 2020 (the '**Law**'). The Guidance proposes the overall structure, extent and composition of the Law, but notably does not draft the specific provisions that would comprise the Law.
- 1.2 It is hoped that this Guidance will allow the Law Officers to draft a Projet de Loi and opinion letter on the Projet, thus commencing the legislative process in Alderney.
- 1.3 Alderney hosts a wide range of terrestrial and inter-tidal habitats and species. These environments are of intrinsic value and should be protected and, where possible, enhanced. The natural environment also plays an important part in the economic and social life of Alderney.
- 1.4 In 2017, the States approved a new Land Use Plan, and updated its Building Development Control Law to recognise the importance of ensuring the Island preserve its biodiversity and manage its resources sustainably to secure the islands environment for future generations. Two years later, the States signed the Blue Islands Charter which committed the island to protecting and enhancing its terrestrial and marine environments. The States further agreed a number of environmental policy objectives to demonstrate their commitment to the Blue Islands Charter. The Environmental Policy declares that the States will protect and value our environment through conservation, protection, education, sustainable resource use and by improving the built environment, to retain the sense of place, culture and distinctive local identity. One particular objective set out in the Environmental Policy is that the States will:

Protect land and marine habitats and species of significant conservation value, including establishing and maintaining legal protections.

- 1.5 The Law is therefore a key element in securing the States objectives.

2. THE LAW

- 2.1 The Guidance proposes a Law which will set out a series of measures which are designed to conserve biodiversity and to protect and enhance the biological and geological natural heritage of Alderney. The Law should also provide for powers to make ordinances to address specific conservation issues in future, should such a need arise. In doing so, the Law will form the backbone of a new legislative framework for nature conservation within Alderney.
- 2.2 For the purposes of producing this Guidance, we have looked at mechanisms used in other wildlife protection legislation, particularly legislation introduced in island jurisdictions, such as the Isle of Man. While this has provided useful precedent, the proposals described in this Guidance are tailored specifically to the conservation need in Alderney.
- 2.3 The Law should be in three parts:
- (a) In part 1, the Law should introduce a new general duty on all public bodies and office holders to further the conservation of biodiversity (except those already

caught by existing legislation such as The Building and Development Control (Alderney) Law 2002).

- (b) In part 2, the Law should introduce arrangements for the protection of specific habitats. The Law should establish the concept of an "Areas of Enhanced Protection". These are designated habitats which by virtue of their particular environmental value should receive enhanced protection. The designation of these areas will set out a list of activities which require consent to be conducted. The areas to be designated will be drawn directly from the areas already designated in Alderney's Land Use Plan.
- (c) In part 3, the Law should introduce arrangements for the protection of specific bird, animal and plant species.

3. **PART 1 – BIODIVERSITY**

General

- 3.1 Part 1 of the Law should deal with biodiversity.
- 3.2 Whilst the conservation of habitats (see the measures in Part 2) or of species (see the measures in Part 3) is relevant to the conservation of biodiversity, Part 1 of the Law should make specific provision for action to conserve biodiversity in its own right.
- 3.3 In essence, the Law should require attention not only to be given to the *means* (such as establishing protected areas or preventing the killing of wildlife) but also to the ends – that is, to the long-term objectives underlying nature conservation legislation. The Law should require public bodies to do more than simply to adhere to prescriptive rules defining what may or may not be done in any given situation. It should require, and empower them at a general level to take appropriate positive action, within the context of their core functions, to further the conservation of the overall diversity, richness and extent of the natural world.
- 3.4 Public bodies operating in Alderney should, as a result, be obliged to give proper consideration to, and account for, the impacts which their activities and policies have on the overall balance and health of the natural biological environment. Public bodies should be required to act in ways which are consistent with the exercise of their other statutory functions, in order to ensure that the conservation of that naturally-occurring biological diversity is encouraged and advanced.
- 3.5 In order to support and inform compliance with the new biodiversity duty, the Law should invoke principles and strategies which are external to it – by establishing a new Alderney Biodiversity Strategy as a key point of reference to which all public bodies must have regard when acting to further the conservation of biodiversity. This Strategy would tie directly to Alderney's Land Use Plan.

Commentary on proposed specific articles

Article 1 – Duty to further the conservation of biodiversity

- 3.6 Article 1 of the Law should place a general duty on public bodies to further the conservation of biodiversity.
- 3.7 A list of public bodies should be set out in a Schedule to the Law.
- 3.8 Article 1 should not apply to:

- (a) the Courts of Alderney;
 - (b) the Building and Development Control Committee when taking the decision whether to grant or refuse planning permission under Article 6 of The Building and Development Control (Alderney) Law 2002.
- 3.9 All public bodies should be required to comply with the duty when exercising any functions. The duty should not, however, override the proper exercise of those functions.
- 3.10 In exercising the duty, public bodies should have specific regard to any Alderney Biodiversity Strategy designated by the States of Alderney under article 2 of the Law.
- 3.11 Article 1 should provide for a power to make ordinances that:
- (a) Require, as part of the general duty, relevant public bodies to have specific regard to particular factors or documents (e.g. international conventions, standards or principles to which Alderney becomes a signatory); and
 - (b) allow specified public bodies to be exempt from the general duty.
- 3.12 Whilst compliance with the duty should be obligatory, public bodies should have significant discretion in relation to the particular action which they consider to be necessary in any particular situation. The new duty is not intended to be narrow or prescriptive, but the purpose of it should be to place the onus on public bodies to take direct responsibility for the impacts which their policies and operations may have on the natural environment, and to take any potential impact into account as a relevant consideration when taking decisions.
- 3.13 Although the Law itself confers no extraterritorial powers, it should be noted that the duty to conserve biodiversity should not be limited solely to the biodiversity of Alderney. It should apply to biodiversity in a global sense and public bodies in Alderney do therefore need to consider the effect of decisions taken, or activities carried out, within Alderney insofar as those decisions or activities may have implications in relation to biodiversity conservation outside Alderney. This would be consistent with Alderney's obligations under the Blue Islands Charter. This might be illustrated by the example of a public body in Alderney which is considering whether to purchase products made from materials sourced from a tropical rainforest. The biodiversity implications of that purchasing decision would need to be considered by the public body.

Article 2 – Alderney Biodiversity Strategy

- 3.14 Article 2 should place a specific duty on the States of Alderney, following consultation with the Scientific Advisory Group (see paragraph 4.6 below), to designate a strategy for the conservation of biodiversity, to be known as the Alderney Biodiversity Strategy. This should be reviewed every five years (in line with the review of the Land Use Plan).
- 3.15 Once designated, the Strategy should be published. The Strategy should include a list of particular species and habitats which they consider to be of principal importance in relation to conservation of biodiversity.

4. PART 2 – HABITAT CONSERVATION

General

- 4.1 Part 2 of the Law should create a new system for conserving and enhancing specific areas of Alderney which are considered to be of particularly importance in terms of their flora and

fauna. The areas of land in question should be known as "Areas of Enhanced Protection" ('AEPs').

- 4.2 The intention is that the new arrangements should safeguard Alderney's natural heritage by establishing a system designed to protect the habitats present on particular areas of land considered to be of special interest.
- 4.3 A significant feature of the AEPs provisions in the Law is that they regulate the degree to which, and the manner in which, certain activities can be carried out on AEPs. In certain circumstances, the Law provides for operations to be either restricted or prohibited if they are likely to damage the natural features on an AEP. The intention is to identify to land-owners and occupiers the activities that cause damage to important habitats, and discourage those activities from occurring.
- 4.4 When taken as a whole, the AEPs notified in Alderney should form a coherent series of protected habitats. To be properly representative of the diversity and geographic range of the natural features of Alderney it is considered that this series could, for example, include, at one end of the spectrum, areas which are exceptionally rare or unique and, at the other, an adequately representative sample of areas which are more widespread or common. It is likely that existing Nature Reserves (owned by the States) and Alderney's Ramsar site will be designated in a manner consistent with their existing designation.

Commentary of proposed specific articles

Article 3 – Areas of Enhanced Protection

- 4.5 Article 3 should establish a body called the Scientific Advisory Group. The Law should state that the Scientific Advisory Group should comprise of representatives of various expert environmental organisations with expertise on a broad range of terrestrial and marine ecology and conservation. The States can request the support of the Scientific Advisory Group in the exercise of its functions under the Law.
- 4.6 Article 3 should give the States of Alderney the power, following consultation with the Scientific Advisory Group, to designate an area of land that requires enhanced protection by reason of being an important habitat for flora and/or fauna.
- 4.7 Once the area has been designated, the States of Alderney should notify that fact to every owner and occupier of that land. Any owner or occupier of that land would then have 3 months from the date of the notification to make any representations or objections with respect to the designation made. If the States of Alderney receive any representations or objections, the States should consider those within 2 months and following further consultation with the Scientific Advisory Group, should either confirm, vary or rescind the designation and shall notify all owners and occupiers of the land of the final decision and the reasons for it.
- 4.8 The designation should:
 - (a) describe the area;
 - (b) specify why the habitat deserves enhanced protection and the flora and/or fauna that the designation is intending to protect;
 - (c) list any activity or omission which, in the view of the States of Alderney, would likely damage the habitat; and

- (d) specify the location and boundaries of the site and provide a map delineating the site.
- 4.9 The owner or occupier of any land which is the subject of a designation under Article 3 of the Law should not carry out, nor cause or permit to be carried out on the land any activity specified in the designation unless:
- (a) the:
 - (i) owner or occupier has given the States of Alderney written notice of a proposal to carry out the activity specifying its nature and extent; and
 - (ii) States of Alderney, following consultation with the Scientific Advisory Group, has consented to the activity; or
 - (b) the owner or occupier and the States of Alderney have entered into a management in relation to the land (see paragraph 4.12 below).
- 4.10 An owner or occupier who conducts an activity specified in the designation without consent of the States of Alderney or without reasonable excuse should be liable to a fine.
- 4.11 It should be a reasonable excuse for a person to carry out an activity specified in a designation in the event of an emergency, and the details of the emergency and the activity specified are notified to the States of Alderney as soon as practicable after the commencement of the activity.
- 4.12 The States of Alderney should have the power to make an agreement with any person having an interest in an AEP with respect to the management of that land. The purpose of the agreement should be to:
- (a) conserve or enhance the natural beauty or amenity of the AEP;
 - (b) conserve the flora, fauna or geological or physiographical features of the AEP; or
 - (c) promote enjoyment of the AEP by the public.
- 4.13 A management agreement may:
- (a) impose land restrictions relating to the method of cultivating the land, its use for agricultural purposes or the exercise of rights over the land and may impose obligations on that person to carry out works or agricultural or forestry operations; or
 - (b) contain further provisions as appear appropriate to the States of Alderney for the purpose of the agreement.
- 4.14 The States of Alderney should also have the power, following consultation with the Scientific Advisory Group to de-designate an AEP or vary the designation.
- 4.15 The Scientific Advisory Group shall be under a duty to advise the States of Alderney on any question which the States of Alderney refer to it in connection with the administration of this Law or otherwise in connection with the protection of birds, animals or plants.

Article 4 – Restoration of Areas of Enhanced Protection

- 4.16 Article 4 of the Law should give the Courts of Alderney the power, when convicting an owner or occupier of land who has conducted an activity specified in the designation without consent, to order that the owner or occupier carries out, within such period as may be specified by the order, activities for the purpose of restoring the AEP to its former condition.
- 4.17 When the Courts of Alderney exercise this power, the time in which the restorative activity should occur should only begin to run once the convicted person has exhausted all avenues of appeal, or the time period in which they could appeal has passed.
- 4.18 The Courts of Alderney should be able to, on the application of the person against whom it was made, discharge, or vary the order, if it appears that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.
- 4.19 An owner or occupier who fails to conduct the ordered activity, without reasonable excuse, should be liable to a fine. In the case of a continuing fine, the owner or occupier should be liable to a further fine for each day during which the offence continues after conviction.
- 4.20 If, within the period specified in an order under Article 4 of the Law, any activities specified in the order have not been carried out, the States of Alderney should be able to, by its agents and employees, enter the land and carry out those activities and recover from the person against whom the order was made any expenses reasonably incurred in doing so.

Article 5 – Compensation

- 4.21 In the vast majority of cases, land that is designated an AEP will be owned by the States of Alderney or another public body, or will be designated with the support of the owner of the land.
- 4.22 In the event that an owner does not support the designation, Article 5 of the Law should allow for the States of Alderney to, on receipt of a claim, make a payment of compensation to an owner of land which is designated as an AEP, should the value of the owner's interest in the land be less than it would have been if the designation had not been made.
- 4.23 The amount of the compensation paid under this Article should be equal to the difference between the value of the land immediately before designation, and the value of the land immediately after designation.
- 4.24 This compensation mechanism is required to offset any potential infringement of the landowners rights that may occur under Article 1 Protocol 1 of the European Convention on Human Rights. This Article gives every person the right to peaceful enjoyment of his possessions and compensation in the event that he is deprived this.
- 4.25 Any dispute as to the amount of compensation should be referred to [x].

5. PART 3 – SPECIFIC SPECIES PROTECTION

General

- 5.1 Part 3 of the Law should repeal the existing ordinance in place to protect wild birds and create a number of broader offences to ensure the protection of all species of wild birds, certain species of wild animals and certain species of wild plants.
- 5.2 There is significant benefit in these environmental protections being contained in one Law. This Part should target the intentional and reckless interference with certain species that are of particular scientific, environmental or cultural importance to Alderney.

- 5.3 Alderney's ecosystem is finely balanced. As such, this Part should also create an offence of where a person introduces non-native or invasive species. If left unchecked these species have the potential to cause significant disruption to the flora and fauna of Alderney.

Commentary of proposed specific articles

Article 6 – Protection of wild birds

- 5.4 Article 6 of the Law should repeal The Protection of Wild Birds (Alderney) Ordinance 2005.
- 5.5 Article 6 of the law should create an offence where a person intentionally or recklessly:
- (a) kills, injures or takes any wild bird;
 - (b) takes, damages, obstructs or destroys the nest of any wild bird while that nest is in use or being built; or
 - (c) takes or destroys an egg of any wild bird,
- or attempts, causes or permits the same, without a reasonable excuse.
- 5.6 Article 6 of the Law should create a further offence where any person intentionally or recklessly:
- (a) disturbs any wild bird included in a Schedule to the Law while it is building a nest or is in, on or near a nest containing eggs or young; or
 - (b) disturbs dependent young of such a bird.
- 5.7 Article 6 of the Law should create an offence where a person possesses any live or dead wild bird or any part of, or anything derived from such a bird (including an egg). A person should not be guilty of this offence if he shows that:
- (a) the bird or egg had not been killed or taken, or had been lawfully killed or taken; or
 - (b) the bird, egg or other thing in his possession or control had been lawfully sold (whether to him or any other person).
- 5.8 Article 6 of the Law should create an offence where a person sells or offers for sale any live wild bird or an egg of a wild bird.
- 5.9 A wild bird is any bird that has not been bred in captivity.
- 5.10 It should be a reasonable excuse if:
- (a) the wild bird: (i) was not disabled by the person's unlawful act; and (ii) is taken solely for the purposes of tending it and releasing it when it was no longer disabled; or
 - (b) the wild bird: (i) was not disabled by the person's unlawful act; and (ii) it is killed where there is no reasonable chance it would recover; or
 - (c) the act was the incidental result of a lawful operation and could not have reasonably been avoided; or
 - (d) the act was necessary for the purposes of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, or fisheries and the person possesses a valid weapons licence.

- 5.11 Article 6 should not apply to any person, or organisation, acting with the authority of the States of Alderney and in accordance with a licence issued under Article [10], or any person authorised to destroy a wild bird by or under any other provision of Alderney law.

Article 7 – Protection of certain wild animals

- 5.12 In a Schedule to the Law, there should be a list of wild animals that are to be protected (a "**protected animal**"). The Schedule should be determined by the States of Alderney following consultation with the Scientific Advisory Group.
- 5.13 Article 7 should provide for a power to make an ordinance that amends the list of protected animals contained in the Schedule.
- 5.14 Article 7 should create an offence where a person intentionally or recklessly:
- (a) kills, injures or takes any protected animal;
 - (b) takes, damages, obstructs or destroys the shelter of any protected animal while that shelter is in use or being built; or
 - (c) takes or destroys an egg or young of any protected animal, or attempts, causes or permits the same, without a reasonable excuse.
- 5.15 Article 7 of the Law should create an offence where a person possesses any live or dead protected animal or any part of, or anything derived from such an animal ~~bird~~ (including an egg).
- 5.16 Article 7 of the Law should create an offence where a person sells or offers for sale any live protected animal.
- 5.17 It should be a reasonable excuse if:
- (a) the protected animal: (i) was not disabled by the person's unlawful act; and (ii) is taken solely for the purposes of tending it and releasing it when it was no longer disabled; or
 - (b) the protected animal: (i) was not disabled by the person's unlawful act; and (ii) it is killed where there is no reasonable chance it would recover; or
 - (c) the act was the incidental result of a lawful operation and could not have reasonably been avoided.
- 5.18 Article 7 should not apply to any person acting with the authority of the States of Alderney and in accordance with a licence issued under Article [10], or any person authorised to destroy a protected animal by or under any other provision of Alderney law.

Article 8 – Protection of certain wild plants

- 5.19 In a Schedule to the Law, there should be a list of wild plants that are to be protected (a "**protected plant**"). The Schedule should be determined by the States of Alderney following consultation with the Scientific Advisory Group. ~~Wildlife Committee~~
- 5.20 Article 8 should provide for a power to make an ordinance that amends the list of protected plants contained in the Schedule.

- 5.21 Article 8 should create an offence where a person intentionally or recklessly picks uproots or destroys any protected plant or attempts, causes or permits the same, without a reasonable excuse.
- 5.22 Article 8 of the Law should create an offence where a person possesses any live or dead protected plant or any part of, or anything derived from such a plant.
- 5.23 Article 8 of the Law should create an offence where a person sells or offers for sale any protected plant.
- 5.24 It should be a reasonable excuse if the act was the incidental result of a lawful operation and could not have reasonably been avoided.
- 5.25 Article 8 should state that in proceedings under this Article, the protected plant is presumed to be a wild plant unless the contrary is shown.
- 5.26 Article 8 should not apply to any person acting with the authority of the States of Alderney and in accordance with a licence issued under Article [10], or any person authorised to destroy a protected animal by or under any other provision of Alderney law.

Article 9 – Introduction of Invasive Species

- 5.27 In a schedule to the Law, there should be a list of species that are considered invasive (an "**invasive species**"). The Schedule should be determined by the States of Alderney following consultation with the Scientific Advisory Group.
- 5.28 Article 9 should provide for a power to make an ordinance that amends the list of invasive species contained in the Schedule.
- 5.29 Article 9 should create an offence where a person releases or allows to escape any animal which is:
- (a) not ordinarily native or a regular visitor to Alderney; or
 - (b) an invasive species.
- 5.30 Article 9 should create an offence where a person plants or grows in the wild any invasive species.
- 5.31 It should be a defence if the person to either of these offences took all reasonable steps and exercised all due diligence to avoid committing an offence.

Article 10 – Power to grant licences

- 5.32 Article 10 should create a licensing scheme such that Articles 6 – 9 do not apply to anything done:
- (a) for conservation purposes;
 - (b) for scientific or educational purposes;
 - (c) for the purposes of falconry or aviculture;
 - (d) for the purposes of any public exhibition or competition;
 - (e) for the purpose of taxidermy;

- (f) for the purpose of photography;
- (g) for the purposes of preserving public health or public or air safety;
- (h) for the purpose of preventing the spread of disease; or
- (i) for the purposes of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or fisheries,

if it is done under and in accordance with the terms of a licence granted by the States of Alderney.

5.33 Article 10 should specify that a licence granted under Article 10 may be:

- (a) general or specific;
- (b) granted to a person, persons or call of persons;
- (c) be subjected to compliance with any specified conditions;
- (d) may be modified or revoked at any time by the States of Alderney; and
- (e) subject to paragraph (d) be valid for a period specified in the licence.

5.34 The Scientific Advisory Group should be consulted on the standards which are to be applied prior to the granting of any licenses.

5.35 Article 10 should make it an offence where a person intentionally or recklessly makes a false statement in order to obtain a licence.

Article 11 – Enforcement

5.36 Article 11 should set out that if a constable has reasonable cause to suspect that any person has committed an offence under this Part, that constable can:

- (a) arrest that person;
- (b) enter any land for the purposes of ascertaining whether an offence has in fact been committed;
- (c) stop and search that person if the constable has reasonable cause to suspect that evidence of the commission of an offence is on that person; or
- (d) examine, seize and detain anything which may be evidence of the commission of an offence.

5.37 If the Chairman of the Court of Alderney is satisfied that there are reasonable grounds to suspect that any person has committed an offence under this Part, the magistrate can grant a warrant to a constable to enter and search any premises for the purpose of obtaining evidence.

Article 12 – Penalties

5.38 Article 12 should set out that a person guilty of an offence under this Part shall be liable to a fine.

- 5.39 Article 12 should set out that the court can order the forfeiture of any item involved in the offence.

Article 13 – Power to vary Schedules

- 5.40 Article 13 should give the power to the States of Alderney, following consultation with the Scientific Advisory Group to vary the Schedules described in this Part.

6. INTERACTION WITH OTHER LAWS/THE LAND USE PLAN

- 6.1 There already are a number of Laws and Ordinances that have been enacted by the States of Alderney which consider conservation, biodiversity and the protection of birds, animals and plants. With the exception of the Protection of Wild Birds (Alderney) Ordinance 2005 (which could be repealed by this Law), all this existing legislation should remain unaffected by the Law. The reason for this is that the scope of this Law is generally coterminous with existing legislation. For example:

- (a) The [Building and Development Control \(Alderney\) Law, 2002](#). This requires the Building and Development Committee to take into account the impact of any development on biodiversity. The 2002 Law only applies in the consideration of an application for planning permission. Article 1 extends this obligation to all decisions taken by the States of Alderney.
- (b) The Building and Development Control (Alderney) Law 2002 is informed by the current Land Use Plan of Alderney (the '**Land Use Plan**') states that "*Alderney's rich biodiversity and natural environment has limited protection from development*" and that "*the variety of sites, habitats and species on the Island should be protected.*" The Land Use Plan creates a hierarchy of terrestrial and inter-tidal biodiversity designation. Habitats and species fall within one of three tiers: international, regional and local. These are provided with different levels of protection when considering planning applications. These categorisations that have already taken place should inform the designations of AEPs under this Law.
- (c) There are a number of Ordinances concerning the animal welfare of all animals including domestic animals or those in captivity. These include the [Protection of Animals \(Alderney\) Ordinance, 1977](#) and the [Animal Welfare \(Guernsey\) Ordinance, 2012](#). Although it is possible that a person could be guilty of an offence under both Article 7 of this Law and these Ordinances, this Law particularly concerns wild animals.
- (d) There are already a number of Laws and Ordinances relating to pollution and energy that are unaffected by this Law. These include:
 - (i) [States Water Supply \(Prevention of Pollution\) \(Alderney\) Law, 1972](#);
 - (ii) [Anti-dumping and Litter Ordinance, 1949](#);
 - (iii) [Refuse Disposal \(Alderney\) Ordinance, 1981](#);
 - (iv) [States Water Supply \(Prevention of Pollution\) \(Alderney\) Ordinance, 1973](#), amended in [1975](#), [1980](#), [1981](#) and [1989](#);
 - (v) [Transfrontier Shipment of Waste \(Alderney\) Ordinance, 2018](#);

- (vi) [Renewable Energy \(Alderney\) Ordinance, 2008](#), which was amended in [2013](#).

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