



ENVIRONMENTAL LAW IN JERSEY

This note provides an insight into the history of environmental law and Jersey's attempt to introduce it.

BACKGROUND

In a nutshell, environmental law can be defined as *"a body of law, which is a system of complex and interlocking statutes, common law, treaties, conventions, regulations and policies which seek to protect the natural environment which may be affected, impacted or endangered by human activities"*.¹ The protection of the environment is usually achieved through the adoption of common international standards into national laws. Consequently, *"environmental legislation enhances human wellbeing, a healthy environment and a sustainable economy"*.²

Whilst environmental legislation can be traced back for a few centuries, it was not until the mid-20th century when a series of United Nations conferences led to the adoption of a set of environmental principles and concepts such as *"sustainable development, precautionary principle, intergenerational equity, polluter pays, environmental impact assessments, public participation in the decision making process, access to information and liability and responsibility for any environmental damage"*. Today, all of these principles and concepts form the basis of environmental law and are part of national laws, including Jersey.

In the international sphere, environmental law has been created by treaties and conventions. Treaties are the main method of creating binding international environmental rules among countries. However, many of the environmental treaties do not necessarily contain clear, detailed or specific rules capable of being instantly adopted into national laws. Instead, the treaties are construed as *"frameworks"* that set out general requirements for States to implement into national laws. The most significant framework conventions include the Convention on Climate Change, the Convention on Migratory Species of Wild Animals, the Convention for the Protection of the Ozone Layer and the Convention on Long-Range Transboundary Air Pollution, among others.

It is worth noting that even though environmental law is a relatively new practice area, it is also one of the most rapidly changing areas of law. Currently, environmental issues are part of everyday life for businesses. This was clearly demonstrated in the British case of **Walton v Scottish Minister [2012] UKSC 44**, where Lord Hope recently stated that *"environmental law proceeds on the basis that the quality of the environment is of legitimate concern to everyone, even if their personal interest may not be directly affected"*.

1 United Nations Environmental Program (UNEP), "Environmental Law and Multilateral Agreements". www.unep.org

2 Christman, B. "A brief history of environmental law in the UK" Environmental SCIENTIST (November 2013)

Evidently, environmental law has become of paramount importance due to the greater awareness of people about environmental issues and problems, along with international developments creating a set of policies and regulations regarding the environment. Furthermore, in recent years the European Union has mainstreamed environmental regulations and policies specifically in leading the fight against climate change. These policies have been replicated in Jersey.

The question is whether or not they have been implemented with the intention to enforce.

ENVIRONMENTAL REGULATORY FRAMEWORK IN JERSEY

Regardless of its size, Jersey as an Island has unique coastal and terrestrial ecosystems. Environmental legislation is, therefore, essential to its protection and conservation.

Unlike the United Kingdom where most environmental legislation originates from EU Law, Jersey has adopted its own set of laws regarding the environment. In certain specific areas, like water and nuisances, Jersey has used the EU standards as guidelines for domestic law.

Moreover, Jersey has ratified international environmental conventions through the United Kingdom. Most of those conventions such as the Convention on the Prevention of Marine Polluting by Dumping of Wastes, the Convention for the Protection of the Marine Environment of the North-East Atlantic, the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES), the Convention on Wetlands of International Importance, especially as Waterfowl Habitats, also known as Ramsar Convention, and the Convention on the Control of Transboundary Movements of Hazardous Waste (Basel Convention) have been enacted into national law. Others, like the Convention on Climate Change, are not yet part of national law. However, its principles and targets have been introduced in the Energy Plan 2050 for the Island.

THE REGULATOR OF JERSEY'S ENVIRONMENTAL LAW

The Minister of Planning and Environment is the main authority responsible for drafting and developing environmental policies and legislation, although the Minister of Health and Social Services generally handles issues related to health and safety which are interlinked with the environment.

The Minister of Planning and Environment, as the regulator, is responsible for drafting policies and regulations, enforcing the laws and investigating and dealing with environmental problems. From time to time, the regulator can by law delegate these powers to an officer who works for the States of Jersey. It may also rely on the public to alert them of any environmental incidents.

The regulator has different enforcement tools, which vary depending on the law enacted. If, after the investigation the Minister finds evidence of pollution or crime, it can take formal steps to enforce environmental law. The methods of enforcement are usually through stop notices, abatement notices, warrants to enter premises, orders, injunctions to stop a particular activity, criminal sanctions, fixed or variable monetary penalties and remedial actions by polluters. Despite having these enforcement tools available, the regulator appears to have been somewhat reluctant to open its toolbox.

Not only do the public authorities and private individuals have to take due regard to the environment, but also directors of companies and business proprietors. Save for the usual

statutory duties under the Companies (Jersey) Law 1991, as amended, both directors and companies themselves are vulnerable to criminal liability for the actions and omissions of companies relating to the environment. Directors should carefully consider the environmental issues when deliberating and considering the activity and transactions of their company, both in Jersey and in any other jurisdictions as they appropriate.

ENVIRONMENTAL LEGISLATION

Due to its complexity, environmental law cannot be comprised in one document nor restricted to one field. For this reason, Jersey has enacted environmental legislation in different areas, such as water, nuisance, planning law, wildlife, waste, pesticides and dumping at sea.

Below, we have set out brief details of the main environmental legislation in Jersey.

1. WATER

1.1. WATER POLLUTION (JERSEY) LAW 2000

This law controls pollution in Jersey waters with the aim of maintaining and improving the quality in and around Jersey.

Regulator: The Minister for Planning and Environment.

Permits: Discharge permit or certificate.

Penalties: Fines and imprisonment for up to two years.

PROHIBITION/OFFENCES	ENFORCEMENT	REMEDIAL ACTIONS
<ul style="list-style-type: none"> ◆ Any person who causes or knowingly permits the pollution of any controlled waters. This includes the introduction of any poisonous, noxious substance where its introduction will result in a hazard to human health or water supplies, harm to any living resource or aquatic ecosystem, damage to any amenity or interference with any legitimate use of controlled waters; and ◆ Any person who, being the holder of a discharge permit, contravenes any condition of the permit. 	<ul style="list-style-type: none"> ◆ The regulator may appoint a designated officer for the purpose of this law and it could be any person who is employed in the services of the States. The designated officer will exercise his or her powers to enforce this law. ◆ The regulator or the designated officer may apply to the Royal Court for an injunction to enforce compliance by any person with any requirements of this law or to restrain any person from contravening any provision of this law. 	<p>The Minister can exercise its powers to apply other penalties such as cleaning up at its own cost, applying the polluter pays principle in order to:</p> <ul style="list-style-type: none"> ◆ eliminate, reduce or control the pollution; ◆ remedy or mitigate its effects; or ◆ restore the waters (or any flora or fauna that are dependent on the aquatic environment of those waters) to their state immediately before they were polluted, as far as it is reasonably practicable for the person to do so.

1.2. WATER RESOURCES (JERSEY) LAW 2007

This law was adopted to provide for the protection, management and regulation of water resources in Jersey.

Regulator: The Minister for Planning and Environment.

Permits: Water resource licence for abstracting water.

Penalties: Monetary fines.

PROHIBITION/OFFENCES	ENFORCEMENT	COMPENSATION
<p>A person shall not cause or knowingly permit:</p> <ul style="list-style-type: none"> ◆ abstracting of water from a source of supply; or ◆ the impounding of water at the source of supply. <p>unless he or she is acting in accordance with a water resources licence.</p> <ul style="list-style-type: none"> ◆ Any person that contravenes the prohibitions set out in the law, or does not comply with the requirements of a water resource licence or any drought order, is guilty of an offence. 	<p>The regulator or the designated officer may apply to the Royal Court for an injunction to enforce compliance of any requirements of this law.</p>	<p>Any person who suffers loss or damage as a consequence of the exercise of the regulator's powers under this law shall be entitled to compensation for that loss or damage.</p>

2. NUISANCE

STATUTORY NUISANCES (JERSEY) LAW 1999

Regulator: The Minister of Health and Social Services.

Penalties: Fixed monetary fines.

DEFINITION OF NUISANCES	PROHIBITION/OFFENCES	STATUTORY DEFENCE
<ul style="list-style-type: none"> ◆ Any premises in such state so as to be prejudicial to health or a nuisance; ◆ Smoke emitted from premises so as to be prejudicial to health or a nuisance; ◆ Fumes or gas emitted from premises so as to be prejudicial to health or a nuisance; ◆ Light energy emitted from premises so as to be prejudicial to health or a nuisance; ◆ Any dust, steam, smell or other effluvia arising on or emanating from industrial, agricultural, trade or business premises or resulting from processes conducted on such premises and being prejudicial to health or a nuisance; ◆ Any accumulation or deposit which is prejudicial to health or a nuisance; ◆ Any animal, bird, insect, reptile or fish kept in such a place or manner as to be prejudicial to health or a nuisance; ◆ Noise emitted from premises so as to be prejudicial to health or nuisance; ◆ Noise emitted from or caused by a vehicle, machinery or equipment in a street so as to be prejudicial to health and a nuisance; ◆ Any well, tank, cistern, water-butt or other water supply howsoever constructed or used for the supply of water for domestic purposes which is so placed, constructed or kept maintained as to render the water therein liable to contamination prejudicial to health; ◆ Any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance; and ◆ Any tent, van, shed or similar structure used for human habitation which is in such a state, or so overcrowded, as to be prejudicial to the health of the inmates, or the use of which, by reason of the absence of proper sanitary accommodation or otherwise gives rise, whether on the site or on other land, to a nuisance or to conditions prejudicial to health. 	<p>The law considers it an offence to contravene or fail to comply with an abatement notice, as well as interfering and/or removing abatement notices.</p>	<ul style="list-style-type: none"> ◆ It will not be considered an offence under the law where the nuisance arises on industrial, agricultural, trade or business premises and where noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, agricultural, trade or business purposes. ◆ It is also a statutory defence (where smoke is the nuisance) where the smoke is emitted from a chimney.

3. PLANNING LAW

PLANNING AND BUILDING (JERSEY) LAW 2002

The purpose of this law is to conserve, protect and improve Jersey's natural beauty, natural resources and general amenities, its character and its physical and natural environments.

Regulator: The Minister for Planning and Environment.

Penalties: Fixed monetary fines and remedial actions.

PROHIBITION/OFFENCES	PERMITS	ENFORCEMENT
<ul style="list-style-type: none"> ◆ Developing land without a permit; ◆ Contravening any conditions of a permit; ◆ Contravening any of the Building Bye-Laws; ◆ Commencing a development without an Environmental Impact Assessment (EIA), when required; ◆ it is considered an offence to build or undertake any development on a site of special interest without the required permit; and ◆ Cutting down, topping, lopping, uprooting, wilfully damaging or wilfully destroying a protected tree without permission or disobeying any condition of a permit. 	<ul style="list-style-type: none"> ◆ Planning permission; ◆ Building permission; ◆ Permits for the display of advertisements; ◆ Permits to cut down trees; and ◆ Permits for the importation and use of caravans within Jersey. 	<p>This law is a very complex set of legislation which enshrines in one document different areas. In consequence, the regulator has powers to exercise enforcement that vary from the revocation of permits, enforcement, stop and condition notices, injunctions and remedial and removal actions.</p>

4. WILDLIFE

4.1. THE CONSERVATION OF WILDLIFE (JERSEY) LAW 2000

The main objective of this law is the conservation and protection of wild animals, wild birds and wild plants within Jersey.

Regulator: The Minister for Planning and Environment.

Penalties: Fixed monetary fines and forfeiture of animals.

PROHIBITION/OFFENCES	PERMITS	ENFORCEMENT
<ul style="list-style-type: none"> ◆ This law prohibits the killing, taking, selling, injuring, keeping or damaging the den of any protected species of wild animals or protected wild birds and/or destroying or taking the eggs of protected birds. ◆ Certain methods of killing or taking of wild birds are prohibited, specifically the use of any springe, trap, gin, snare, hook and line, electric device, stunning or frightening, poisonous, poisoned or stupefying substance. ◆ Any person who uses any bow, crossbow, explosive, weapons, shotgun, artificial lighting, gas or smoke (among others) is guilty of an offence. ◆ This law prohibiting the picking, uprooting, collecting or destroying of seeds and/or protected plants. ◆ Methods of killing, injuring or taking of wild animals are prohibited. ◆ It is not an offence take a disabled protected wild animal or wild bird for the purpose of tending it and returning it to the wild. 	<p>A licence may allow for the taking, killing, destroying, disturbing, injuring or selling of protected animals, birds and plants listed in the schedules of the law for purposes of science, education, conservation, preservation of public health or safety, prevent of serious damage or the spread of disease.</p> <p>It should be noted that the definitions of "protected birds, animals or plants" are listed in Schedule 1– 4 of this law.</p>	<p>The Royal Court may order the forfeiture of any animal, egg, nest, weapon or any vehicle used in connection with the offence.</p>

4.2. ENDANGERED SPECIES (CITES) (JERSEY) LAW 2012

The law regulates the trade in certain animal and plant species that are or may be in danger of extinction. This implements the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES).

The purpose of the law is to control the international movement of wild plants and animals, alive or dead and whole or parts thereof, in such a manner as to be assured that the pressures of international trade do not contribute to the endangerment of the listed species (Appendix 1,2 and 3 of this Law).

Regulator: The Minister for Planning and Environment shall be the Management Authority.

Permits: Licences, permits and certificates.

Penalties: Fixed monetary fines, seizure and forfeiture of animals and imprisonment for up to 7 years.

PROHIBITION/OFFENCES	ENFORCEMENT
<ul style="list-style-type: none"> ◆ Any person shall not import, export or re-export an Appendix 1 or 2 specimen into or out of Jersey, except in accordance with an import permit granted by the Management Authority; ◆ Any import, export or re-export of an Appendix 1, 2 and 3 specimen without a permit will be considered an offence; ◆ Any person that gives false information to the Management Authority will commit an offence; ◆ Any person that alters or obscures, adds to or removes a marking in relation to any animal or plant for the purposes of this law shall commit an offence. <p>A person shall not, without reasonable excuse:</p> <ul style="list-style-type: none"> ◆ have in his or her possession or control; ◆ sell or offer to sell; ◆ purchase; ◆ export or re-export; or ◆ transport within Jersey, <p>any specimen of set out in Appendix 1, 2 or 3.</p>	<p>An officer has the power to stop and search a person, search premises and stop and search vessels, aircrafts and vehicles, if he or she thinks there is reasonable evidence that an offence under this law has been, is being or is about to be committed.</p>

5. WASTE

WASTE MANAGEMENT (JERSEY) LAW 2005

This law provides for the control and management of waste operations within Jersey and regulates the transboundary movement of wastes.

Regulator: The Minister for Planning and Environment

Permits: Licence

Penalties: Fixed monetary fines and imprisonment for up to 2 years.

PROHIBITION/OFFENCES	ENFORCEMENT	REMEDIAL ACTIONS
<p>Controlled waste means:</p> <ul style="list-style-type: none"> ◆ hazardous waste; ◆ health care waste; or ◆ municipal waste. <p>Any person who causes or knowingly permits any activity listed below shall be guilty of an offence:</p> <ul style="list-style-type: none"> ◆ the deposit of controlled waste on any land; ◆ the keeping of controlled waste on any land; ◆ the treatment of controlled waste on any land, or by means of any mobile plant; and ◆ the disposal or recovery of controlled waste on any land, or by means of any mobile plant. 	<ul style="list-style-type: none"> ◆ The Minister may, in writing, appoint an inspector for the purposes of this law who may be any person who is employed in the administration of the States. ◆ The Minister or an inspector may apply to the Royal Court for an injunction to enforce compliance (by any person) with any requirement of this law. 	<p>If any person has caused or knowingly permitted pollution by reason of the introduction of any waste into the environment, the remedial actions are as follows:</p> <ul style="list-style-type: none"> ◆ to eliminate, reduce or control the pollution; ◆ to remedy or mitigate its effects; or ◆ to restore any land affected (or any flora or fauna that are dependent on it) to its state immediately before the pollution occurred, as far as it is reasonably practicable for the person to do so.

CONCLUSION

This briefing note has provided a high level review of the most important aspects of environmental legislation and some of the problems that may arise from non-compliance.

Unfortunately, some of the legislation is now out of sync with international standards such as greenhouse gases, levels of nitrates and air and noise pollution. The Statutory Nuisances (Jersey) Law 1999 appears to be the only weapon in the armoury (although the authorities seem reluctant to use this).

There is also some legislative concern amongst senior practitioners that the authorities are sacrificing the environment for the benefit of businesses, without much thought for the long-term consequences for the environment. Given the size of the jurisdiction and wealth of the island, Jersey could easily lead by example and be the showcase to the world.

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